INSTITVTIONS,

Or

Principall grounds of the Lawes and Statutes of England.

Newly and verie truly corrected & amended, with many new and good additions, very profitable for all sorts of people to know, lately augmented and imprinted.

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The Prologue of the Author to the *Reader*.

DEmosthenes the renouned Orator, defineth lawe in this wise. The Law (sayth he) is the thing that all men ought to obey for many causes, but especially because lawe is the inuention, and also the gift of God, the decrees of prudent men, the chastisement of offences, and finally the common suerty of a Realme, whereby it becommeth all men to lyue, which bee conuersant in the same, *Chrysippus* also, an excellent Philosopher thus beginneth his booke of lawes. The lawe is King of all, as well deuine as humayne affayres, the president and controuler of thinges honest and dishonest, the Prince, the Captaine and ruler of the iust and vniust, and it is of ciuill creatures, as well the commaunder what they ought to doe, as the forbidder, what they ought not to doe. These authenticke sayinges of wise men, assuredly ought much to inflame vs to the knowledge of those things without which wee shall bee esteemed as no men but as brute and sauage beastes. Let vs not commit that, that it be said of Englishmen as it was once said of the men of Athens, that is, that we make verie good and profitable lawes, but we vse them not. Certainly there can be no greater reproch to a cō-

mon weale, then this. One leſſon I woulde wee learned of the ancient Romaine lawyer named *Celſus*, and that is this: the knowledge of law is not to beare away the wordes, but the pith and power of them. This is written becauſe there be many which when good and holeſome lawes be made, ſeeke not to ſee them executed, & obſerued, but rather how to defraud them & to haue them vnexecuted, which kinde of people after the ſentence of moſt auncient Lawmakers bee no leſſe worthy of reprehenſion then they which doe expreſſely againſt the Lawe. Now they do (ſay they) againſt the Law, which doe the thing that the Lawe forbiddeth. And they defraude a Lawe or Statute, which the words of the lawe ſaued, doe peruert the meaning and ſentence of it.

Let vs then ſo reade the Lawe that wee may beare away the ſence and meaning of them, and ſo fulfill and obſerue the Lawes, that it may appeare that they were not made in vaine. Thus doing wee ſhall pleaſe God, wee ſhall bee obedient ſubiectes to our Prince.

And finally we ſhall ſeeke
our owne weale
and ſafetie.

What is Law. Chap. 1.

The law is the direction & ministration of Iustice. And Iustice is (as the Emperour Iustinian saith in his Institutions) a constant and permanent wil to render vnto euery person his right and dutie. The learning or prudence of law, is a knowledge of deuine and humaine thinges, a science & perfect notice of equitie & iniquitie, of right or wrong.

Now forasmuch as a great portion of the prudence, of science of the lawes of this realme of England consisteth in the perfit knowledge of estates, which men haue in landes and tenements, wee shall first as compendiously, and as simply and plainely as we can, treate somewhat of estates.

A diuision of Estates. Chap. 2.

YE shall therefore vnderstand, that whosoeuer hath any estate in lands or tenemẽts, either hee hath in the same onely a chattell, or a free hold, or an inheritance. If he hath an estate but for terme of certaine yeares, or at his landlordes will, then it is called a chattell, if for terme of his life, or for any other mans life, it is called a freehold. And if he hath to him and to his heires in fee simple or in taile, then hee hath an estate of inheritaunce.

Chattell.

Freehold.

Inheritance.

Tenant for terme of yeares. Chap. 3.

TEnaunt for terme of yeares, is he to whom lands or tenementes be let for terme of cer-

taine yeares as is agreed betweene the landlord and the tenaunt. And when the person to whom such lease is made, doth enter by force of the said lease, and is in possession of the same: then he is called a tenant for terme of yeares.

Rent reserued.

And here ye shall note, that if the lessour that made the lease, hath reserued vnto him a yearely rent vpon the said lease, as it is accustomably vsed to be done, if the rent bee behinde and vnpaid, it shalbe in his election, either to enter and distraine for the rent, or to bring an action of Det against the tenant for the arrerages of the same. But in this case it is requisite, that the lessour were seased of the lands or tenements at the time of the making of the lease, for otherwise it shalbe a good plee in the action of dette for the tenaunt, to say the lessour had nothing in the lands & tenements at the time of the lease made, except the lease were made by deed indented, for then the plee shal not lie in the tenants mouth to plead.

Action of Det

A good plee.

Liuerie of season needeth not in a lease for terme of yeares.

And it is to bee knowen, that in a lease for terme of yeares, whether it bee by deede or without deede, there need no liuerie of season to bee made to the lessee, but he may enter when he wil by vertue of his lease without any further ceremony of the law.

And if a man leaseth landes for terme of yeares, though the leassour chaunceth to die before the lessee doth enter, yet hee may enter well enough. Otherwise it is where liuerie of season is to be made, as in freeholds & inheritances.

Waste.

Also if the tenaunt for yeares doth Wast, the landlord may bring an actiō of wast against him,

him, and shall recouer the place wasted, and his treble damages.

Also if a lease for yeares be made of two seuerall things and after the one is recouered the lessee shall hold the other, and the rent or ferme shalbe appoꝛcioned. M. 12. H. 8.

Also if the tenaunt for yeares graunteth a greater estate in the land, then he hath himselfe whereby he conueyeth the fee simple to himselfe he shall forfait his lease or terme. Forfaiture.

Tenant at will. Chap. 2.

TEnant at will, is he, to whom landes or tenements bee leased to haue and to hold the same at the will of the lessour. And in this case the lessour may put out his tenaunt at what time him listeth. But yet neuertheless if the tenant haue sowed the grounds with Coꝛne, in this case if the lessour will enter and put out his tenant beforꝛe Haruest, the law will giue him free comming and going to reape and carrie his coꝛne away, without any punishment or damages to bee sustayned for his so doing, because he knew not at what time the lessour would enter. But otherwise it is of tenant for terme of certaine yeares, for if hee soweth the ground, and his terme of the lease be come out and expire beforꝛe the coꝛne bee ripe, in this case the lessour, or he in the reuersion may enter and take the coꝛne because it was the follie of the tenant to sowe the ground, knowing the end of his terme.

In likewise, tenaunt at will shall haue free comming & going after the time of the lessours

entrie, to carie away his houshold stuffe & goods for a reasonable space.

Ye shall also vnderstand, that he that maketh a lease at will, may reserue an annuall or yearely rent, in which case if the rent be behind, hee may enter very well and distraine the goods & chatels of the tenant, or at his election he may bring an action of det against him.

Distres or action of dette.

Also it it is to be knowen, that tenant at will of a house or tenement, is not bounde by the order of the lawe to sustaine and repaire the houses that be decaied and ruinous, as is the tenãt for yeares, and therfore no action of Wast lieth against him: yet if he will doe wilfull wast, as if he plucketh downe the houses, or cutteth downe the trees: it hath beene thought by the sages of the lawe, that the lessour may bring an action of Trespasse against him, and shall recouer his losses thereby sustained.

Waste.

Trespasse.

And if such a tenant die, and his heire entre, in that case, the lessour may haue an action of Trespasse against the heire for his entrie.

Tenant by copie of Court roll. Chap. 5.

There is another kinde of tenaunt at will, which is called Tenaunt by copie of the court Rolles. And this is when a man is seased of a mannour, within which, it hath beene vsed time out of minde, that the tenaunts within the boundes and precinct of the said mannour, haue holden lands and tenemẽts to them and to their heyres in fee simple, fee taple, or for terme of life, at the will of the Lord according to the custome of the mannor. And such a

tenant

tenant cannot alien or sel his land by his deed, for if he doe, the land or tenement that is so alienated and sold, is forfait into the Lords hands, but if hee will alien his copyhold land to another, he must according to the custome, come into the Lords Court, and there surrender it into the Lords hand, to the behooke and vse of him that shall haue the estate. The forme of which surrender is commonly vsed to be thus. Surrender.

Ad hanc curiam venit. A. de B. & sursum reddidit in eadem curia vnum messuagium, &c. in manus domini, ad vsum. C. de D. & heredum suorum vel heredum de corpore &c. Et super hoc venit prædictus C. de D, & eripit de domino in eadē curia messuagium prædictum, habendum & tenendum sibi, &c. ad voluntatem domini secundum consuetudinē manerij, faciend' inde redditus seruitia, & consuetudines inde prius debitas & consuetas, &c. Et dat domino pro fine, &c. & fecit domino fidelitatem. The forme of a surrender.

These as I said be called tenants by Copie of Court rolle, because they haue none other euidence to shewe concerning their landes, saue only the copies of the rols of their Lords court.

Neyther can these tenauntes sue or bee sued for such landes, in the Kings Court, by writ or otherwise, but if they will in any wise impleade or sue others for such copie landes, they must do it by way of plaint in the Lords Court after this sort.

A. de B. queritur versus C. de D. de placito terræ videlicet de vno messuagio xl. acris terræ, 4. acris prati, &c. cum pertinētijs, & facit protestationē sequi quærelā istam in natura breuis dñi The forme of the plaint.

regis

regis assise mortis antecessoris ad communem legem vol.&c. plegij de prosequendo, F.G. &c. Now although some such tenants haue an inheritance according to the custome of that manour, yet in verie deed they are but tenaunts at the will of the Lord. For as some men thinke if the Lord will expell them, and put them forth they haue no remedie at all, but to sue vnto their Lord by way of petition, desiring him to bee good and gracious Lord vnto them. For if they might haue any remedie by the lawe, then should they not be called (say they) tenaunts at the wil of the Lord after the custome of the manour. But other men of no lesse learning and prudence, haue beene of contrary iudgement, as Lord Brian chiefe Iustice, in the time of King Edward the fourth, whose opinion was alwaies that if such a tenaunt by the custome (paying his seruices) bee ejected and put forth by his Lord without cause reasonable, he may verie well bring and maintaine an action of trespasse against his Lord at the common lawe, as appeareth termino Hillarij, an. 21.E.4. also Lord Danby chiefe iustice likewise, was of the same iudgement, as appeareth termino Michā. an. 7. E. 4. where he saith that the tenaunt by the custome is as wel inheritable to haue his land after the custome, as is he that hath a free hold at the common law, but the determination of this questiō, I remit to my great masters which can loose the knots and ambiguities of the law.

Action of trespasse.

For asmuch as yet still of this matter, Caussidici certant, & adhuc sub iudice lis est.

Also yee shall vnderstand that the vsage of some

some manours is, when the tenaunt wil surrender his land to the vse of an other, that he shall take a wand or a rod in his hand, and deliuer it to the steward of the court, and the steward shal deliuer the same wand in name of seisin, to him that shall take the land, and such a tenaunt is called tenaunt by the verge. Diuers other customes there be of surrendring of Copy holde lands, which here for tediousnes I will omit. And forasmuch as tenaunts by custome of the Manour, haue by the course of the common law no freehold: therefore they be called tenaunts of base tenure. Base tenure.

Also if such a tenaunt letteth to ferme his copie hold land for longer time then a twelue moneth and a day without the Lords licence, it is a forfaiture of his land to his Lord.

And know yee that if this tenaunt fell any timber that groweth vpon the land but onely for the reparation of the same, this is wast and a forfaiture of his copie hold.

Hitherto haue I treated of the first member of our diuision, that is to wit, of chattels, for as I said, all leases for terme of yeares, and at will be accounted in the lawe, but as chattels, and be compriſed vnder that name, saue that these be called chattels reals, where as kine, Oxen, Horses, money, plate, corne, and such like be called chattels personals. Chattell reall and personall.

Now we will proceede to the expl nation of the second member, that is to say, of freeholdes.

Free

FReeholds or franke tenements a man may haue in sundrie wise, for eyther hee is seised for terme of his owne lyfe, or for terme of another mans lyfe. If he be seised for terme of his owne life, eyther he hath gotten such estate by way of purchase, or else the law hath intituled him thereunto. I call it by purchase, whether he commeth vnto it by his owne bargayning and procuremēt, or by the gift of his frīēd, and I call it by the operation of intituling of the Lawe, when a man marrieth a woman that is an inheritrix, and hath issue by her, and shee dieth, now shall he haue the landes during his life, by course of the lawe, and shall be called tenant by the curtesie of England.

Tenant by the curtesie.

In likewise, if a man be seased in fee simple, or fee tayle of lands, and taketh a wife, and hee dieth, the law giueth vnto the wife the third part of her husbands lands for terme of life, and she shall be called tenaunt in dower.

Tenaunt in dower.

Tenant for terme of life. Chap 7.

TEnant for terme of life, is he that holdeth lands or tenements for terme of his owne life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is to call him that hath an estate for terme of his owne life tenaunt for life, and him that hath an estate for terme of an others life, tenaunt for terme dauter vie, that is to say, tenaunt for terme of an others life.

Yee shall note that like as he that maketh the lease is called the lessour, and he to whom the lease

leasse is made, is called the lessee, so he that maketh a feoffement is called the feoffour, and he to whom the feoffement is made the feoffe.

Also if the tenaunt for terme of life, or tenant for terme of an other mans life doe waste, the lessour or he in the reuersion, shall maintaine very well an action of waste against him, and shall by the same recouer treble damages.

Finally ye shall vnderstand that by an act of Parliament made in the xxvij. yeare of our Soueraigne Lorde King Henry the eight, it is enacted that no Freeholde, nor estate of inheritaunce shall passe nor take effect by reason of any bargaine and sale, except that same be made by writing indented, sealed, and enrolled in one of the Kings Maieslies Courtes at Westminster, or else within the County where the land doth lye, before the custos Rotulorum, and two Justices of peace, and the Clerke of the Peace of the same Countie or two of them at least, of which the said Clerke shall be one, & that such inrollement be made, within sixe moneths after the date of such writing. And for the inrollement of euery such writing where the land comprised therein, is not aboue the yeerely value of fortie shillinges, they shall take two shillings, that is, twelue pence to the Justices, and twelue pence to the Clerke. And if the land be aboue the yeerely value of xl.s. then they shal take v.s. that is ij.s. and vj.d. to the Justices, and ij.s. and vj.d. to the Clerke, which shall inrolle and ingrosse sufficiently in parchment such deedes and writings, and at euerie yeeres end he shal deliuer the same to the custos Rotulorum Waste.

Rotulorum of the ſame county, to remaine in his cuſtody among other recoꝛds of the ſame coũty ſo that the parties reſoꝛting thither may ſee thẽ. Pꝛouided, that this extend not to any tenements oꝛ hereditaments lying within any Citie oꝛ towne coꝛpoꝛate, wherin the Maioꝛs Recoꝛders, oꝛ other officers haue authoꝛitie, oꝛ haue lawfully vſed to enrolle any euidences oꝛ wꝛittings within their pꝛecinct.

Tenaunt by the curteſie. Chap. 8.

TEnaunt by the curteſie of England, is he that hath maꝛied a wife inhꝛerited, & hath had iſſue by her, & ſhe is dead, in this caſe the lawe of England permitteth and ſuffꝛeth the huſband of ſuch wife to ꝛeceiue & keepe ſtill all his wiues land that ſhe had, either in fee ſimple oꝛ fee tayle, ſo long as he liueth. And this is by the curteſie, & vſbantie of England, foꝛ this thing is vſed in none other country noꝛ ꝛegion.

But in this it is ꝛequiꝛed that the child be vitall, that is to ſay, be boꝛne and bꝛought foꝛth into this woꝛld aliue, and theꝛfoꝛe the common ſaying is, and hath beene, that vnleſſe the childe be heaꝛd cꝛy, the fatheꝛ ſhall not be tenaunt by the curteſie, foꝛ the onely pꝛoofe and aꝛgument of life in an infant boꝛne, is the vagꝛe and cꝛying. Ye ſhall fuꝛthermoꝛe vnderſtand, that vnleſſe the huſband be in actuall and ꝛeall poſſeſſiõ of his wiues lands, and ſeiſed of them in heꝛ ꝛight, he ſhall not be tenaunt by the curteſie after heꝛ death. And theꝛefoꝛe if lands diſcend to a mans wife, ſo that ſhe is tenaunt in the law, & to euery mans actions, yet if the huſband haue

not

not made an actuall entrie during couerture and matrimonie betweene them hee ſhall not be tenaunt by the curteſſe, for it ſhall be reputed and iudged his folly and negligence that hee would not enter in her life time.

Otherwiſe it is of aduouſons, rentes, commons, and ſuch other thinges, which forthwith when they diſcende, be in a man or a woman without any entry or further ceremony of law.

Note that if a tenāt by the curteſy of Englād wil ſuffer or make any waſt in the landes or tenements that hee ſo holdeth, he is puniſhable therefore, by action of waſte brought by him in the reuerſion.

Alſo it is to be knowē, that of thinges that be in ſuſpence, a man ſhal not be tenant by the curteſſe, & therefore if a man be tenant in fee ſimple of certaine land, and doth entermary with a woman that is the ſeignoreſſe or Lady of the ſame, and hath iſſue by her, & ſhee dieth yet ſhall he not be tenant by the curteſſe of the Lordſhip or ſeignory, becauſe himſelfe is tenant of the land, and therfore the Lordſhip is ſuſpended for the time, for a man cannot be both Lord & tenant of one thing, but if he had not beene tenaunt of land he ſhould haue had the Lordſhip after the death of his wife by the curteſy of England very well.

Alſo note that of a right, onely a man ſhall not be tenant by the curteſy, as if a woman ſole ſeaſed in fee of lande or tenements, be diſſeiſed, and after take a huſband, and they haue iſſue, and ſhe die before any reentree made, the huſbād ſhall not be tenant by the curteſy.

Note further that of a reuerſion, a man ſhall

not

not be tenant by the curteſy, as if a woman ſole ſeaſed of lād in fee, make a leaſe to S. for terme of life, after taketh a huſband, & they haue iſſue, and ſhe die, liuing the leſſee for terme of life, the huſband ſhall not be tenaunt by the curteſy.

Of tenaunt in Dower. Chap. 9.

Dower at the common law.

Dower by cuſtome.

TEnaunt in dower, is ſhe that hath beene married to an huſband that was during the matrimonie, betweene them ſeiſed of landes or tenementes in fee ſimple, or fee tayle which is now dead, and ſhee ſeaſed of the third part of her huſbands ſaid lands for terme of her life. For by the common law of the land if the huſbande be at any time during the couerture ſeaſed lawfully, whether it be by purchaſe or by diſcent, eyther in fee, or in tatle, and dye, his wife ſhall be endowed by the courſe of the common law of the third foote. And in ſome places by an auncient cuſtome, ſhe ſhall be endowed of the moytie, yea and though the huſband were neuer ſeiſed actually during the couerture, yet if the lands be caſt vpon him by the lawe, ſo that the law calleth him tenaunt to euery mans action, it ſufficeth the woman to demaund her dower, for it were vnreaſonable that the negligence & ſlacknes of entring of the huſband, ſhould hurt the wiues title.

Tenaunt by the curteſie.

Otherwiſe it is, as is ſaid before of tenaunt by the curteſie, for if landes deſcended to a woman couert and the huſband for ſlouthfulneſſe or negligēce, doth not enter in his wiues life he ſhal not be tenaunt by the curteſy, for by all lawes the wife oweth obedience and ſubiection to her huſband

husband, and therefore she cannot compel him to enter, but whē lands descend to the wife, the husband only hath power to enter at his pleasure.

And ye shall vnderstand that vnlesse the wife be aboue the age of nine yeres at the time of her husbands death, she shall not be endowed by the Common law.

But it is to bee knowen that a woman may by diuers wates estoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murther, or felonie, she shall haue in this case no dower, notwithstanding she hath obtained her pardon. A woman shal haue no dower

Also, if after the death of her husband shee taketh alease for terme of life, of the same landes whereof she is indowable, she looseth her dower of the same. Moreouer if shee depart frow her husbande, and liueth in aduiuterie with another man, and is not reconciled again to her husband without coertion of the ecclesiastical power, she looseth her dower after her husbandes death. She shall be also barred of her dower if she wil withholde from the heire, the charters and euidence, concerning that lande whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause.

It ought not to be vnknowen also, of what things she may demaunde dower, and of what things not. Of lands, messuages, aduoulons, rent charge, rent seruices, or segnories in grosse, or otherwise of villanies, of commons certaine, of estouers certaine, of milles and offices, or of the profite of them, shee is dowable. But of commons and estouers sans number also No dower.

of annuities, of homages, of things of pleasure, as of seruice of payment of roses and semblable she shall not be endowed.

Dowment ex assensu patris.

There be yet two other kinds of dower, ỹ one is called dowment ex assensu patris, that is to say, by the assent of the father, and the other is called dowment de la plus beale part. That is to say of the fayrest part.

Dowment ex assensu patris, is when the father is seased of lands in fee simple, and his son which is heire apparant, endoweth his wife at the Church doze, whē he is espoused of parcel of his fathers lands, with the assent of his father in writing, testifying the same assent, if in this case her husbād die, she may forthwith enter into the lande so assigned vnto her, without further procurement of proces of law, although the father of her said husband bee yet aliue, & in actuall possession of the land. But if she thus do, and take her to this endowment at the Church doze, she cannot haue her dower also by the cōmon law of the thirde part of all her husbandes lands, oz any part oz parcell of them, how bett, if shee will refuse this assignement made vnto her at the Church doze, and demaund dower at the common law, she may so do very well.

Dowment ad hostiū eccleſiæ

A man may also endowe his wife at the time of the spousals of his owne lands, the which he hath by his owne possession, and that dower is called dower adhostium eccleſiæ, that is to say, at the Church doze.

Dowment de la plus beale

Dowment de la plus beale part, that is to say, dowment of the fairest part shall bee in this case when a man is seised of lands which he holdeth of

of another man by knights ſeruice, and of other lands which be of ſocage tenure, and hath iſſue, which is within the age of xxi. yeares and die, and the Lord of whom the landes is holden by knights ſeruice entreth into the land holden of him, and the mother of the child entreth into the ſocage tenure, as gardaine in ſocage, if in this caſe the woman will bring a writte of dower againſt the Lord which is gardaine in chiualrie, he may pleade the ſpeciall mater, and ſhew how ſhe is gardeyne in ſocage, & hath ſo much lande, and thereupon pray the courte that ſhe may bee ſuffered to endow her ſelfe of ſo much lande, being in her owne cuſtodie, as amounteth to the third part of the whole lands.

And then the iudgement ſhalbe ỹ the gardeine in chiualrie ſhall retaine the land holden of him quite from the woman, during the nonage of the ward. After which iudgement and ſentence giuen ſhe may go, and in the preſence of her neighbours, endowe her ſelfe of the beſt part of that which is in her cuſtodie, amounting to the third part of the whole, & then is ſhe called tenaunt in dower de la plus beale.

Finally, yee ſhall vnderſtand that by a ſtatute made the xxvij. yeare of our moſt dread ſouereigne Lord, King Henry the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their wiues, and to the heyres of the husbande, or to the husband and wife, and the heyres of their two bodies begotten, or the heires of one of their bodies or for terme of both or one of their liues, or any other perſons and their heires, to the vſe of An. 27. H. 8.

the husbād and wife, or to the wife alone for her ioynture: in euerie such case the woman shal not bee suffered to demaunde any dowrie of the residue of her husbandes landes of whom shee hath ioynter against any tenaunt of the land. But in case she hath no such ioynter, thē may she demād her dowrie after the course of the common lawe. Prouided neuertheless, that if such women bee lawfully expulsed from their ioynter, or any part thereof, without fraud or couin, then shall they be endowed of the residue of their husbāds lands, for as much as the landes shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life or otherwise in ioynture (except it be by act of parliament) & the wife ouerliue her husband, in whose time ỹ ioynture was made, in this case the wife may refuse the landes so appointed vnto her in ioynture, and haue her dower at the comm̄ law, of such lands as her husband was seased of, at any time during the coueture.

Also, if the husband committeth treason, murder, or felony, for which he is attainted, the wife shall not haue her dower.

And note that if the husbande enter into religion, and is professed, the heire shall enter into the land, but the the wife getteth no dower til the husband dieth, M. 32. E. 2.

And likewise, if a man seased of lande taketh a wife that is an alien borne, and dieth, she shall not bee endowed, except she bee made denisin by act of parliament. T. 3. H. 6. And note that where

the

the wife bringeth a writ of dower, & recouereth her right, ſhe ſhal recouer no damages, but wher her huſband died ſeaſed of the lands recouered.

A diuiſion of inheritance. Chap. 10.

Damages.

HEtherto haue I ſpoken of freeholds, now it remaineth to treat of inheritances, not the inheritaunces that bee no freeholdes, for they bee freeholds alſo, but the other eſtates of which I haue hetherto treated be onely freeholdes and of no higher nature, where as an eſtate of inheritance, although it bee a freeholde in deed, yet it is not to be called by name, ſith it is after more excellent & greater eſtate. But ye ſhall vnderſtand, that of inheritances ſome bee of more amplitude & excellency then other ſome be, as that inheritãce which is pure ſimple, and without limitation of what heires, which kinde of inheritance is called fee ſimple. But when I make a limitation of what heires, then it is called fee tayle, and of which alſo be two ſorts, as hereafter more at large ſhalbe declared. Nowe therfore the nature of fee ſimple is ſet forth with our accuſtomed compendiouſnes.

Of fee ſimple. Chap. 11.

Fee ſimple.

FEe ſimple is (as I ſaide) the moſt ample and large inheritaunce, that can bee in this realme deuiſed or inuented, it is that which a man hath to him and his heires, ſimple without any further limitation, for whether they be of his owne bodie begotten or not, ſo that they be the next of his kinne, and within the degrees it ſufficeth.

So then tenaunt in fee simple is he that hath lands or tenemẽts, whether it be by purchase or by discent, to him & to his heires & assignes for euer. For if a man will purchase landes in fee simple, he must neds haue these words his heirs in his purchase, for these be the only words that make ỹ estate of inheritãce. Therefore if lands be giuen to a man for euer, & no mentiõ be made of his heires: he hath an estate but for terme of his life, because these words his heires do lacke.

Yet neuertheles, if a man by his testament doth deuise landes to an other in such place or case where the custome or law wil serue, so to do though hee maketh no mention of heires, but saith that he bequeth to such a person such lands to haue and to holde to him and to his assignes for euermore here an estate of inheritance doth passe, for in testaments the wil and intent of the testator is to be pondered and not the formall & prescripte words of the law.

Also these termes in the law, frank mariage & frank almoign, that is to say free mariages free almes do include in thẽ words of inheritance.

And therefore if I giue lands to a man with my daughter in franke marriage without further addition or mention of heires, this is an estate of inheritance, as shall be hereafter declared more plenteously. So likewise it is of landes giuen to an house ecclesiastical all in pure and franke almes. Moreouer, if land be giuen to a man and to his bloud, or vnto him and to his seed, hee hath in both cases an estate of inheritance for in the last he hath a fee tayle, and in the other a fee simple. For this word seed, & blood

[1] contra Co. Lit. fol. 20.

and

and such like do emply words of inheritance.

Also if landes bee giuen to a man and to his heires males, or females, hee hath by this gift a fee simple, because it is not expressed of what bodie the issue shall come.

But now it is to be seene who be said a mans heires in the law, ye shal therfore know that my brother or sister by the halfe blood, that is to wit by the fathers side, & not by the mothers, or contrariwise by the mothers side, & not by ꝑ fathers, shal neuer be mine heire nor none ꝑ come of thē. The halfe bloud.

Neither my bastard can be mine heire, nor mine owne naturall father nor mother, nor grandfather, nor grandmother can be mine heire. For it is a principle and ground of the law, that inheritance may lintially discēd, but ascēd it may not. And therefore if I haue lands in fee simple and die without issue of my bodie, my father cānot be mine heire but my fathers brother or sister shal, & thē if my vncle or aunt die seased without issue my Father shal haue the lands as heire to mine vncle and not as heire to me, for that cannot be. A bastard shal be no heire. A ground of the law.

But it may go from me to mine vncle or aunt well enough, for that is not called a lineall ascention, but a collaterall discent.

Also ye shall vnderstand that a lineall discent is when the discent is conueyed in the same line of the whole bloud, as grandfather, father, and sonne, and so downe. And collaterall discent is of another braunch, from aboue of the whole bloud, as the grandfathers brother or fathers brother, and so discending. Liniall and collateral discent.

And ye shall note, that by the common law of this realme, the eldest son shall haue the whole

inheritance, and after him if he haue no issue the second son, and so forth. Also if I haue no sons but daughters, then shall all the daughters together inherit, which be called coparceners, but if I haue no issue at all, neither sons ne daughters, then shal my eldest brother in heritage succeede mee, but if I haue no brother, then my sisters if I haue any, if not, my vncle by my fathers side, if the lands be of mine own purchase, or if they discended vnto me from my father. And to be short, if there be none in life of my fathers side, the purchased lande shall go to my mothers side, & if there can bee founde no heire neither by my fathers side, nor yet by my mothers, then shal it eschete, as they cal it, to ỹ Lord of whō it was holden, for euery land must needs be holden of some Lord, as shall be hereafter shewed. But if lands discend vnto me by my mothers side, then if I faile of issue, the lands shal descend only to my heires of my mothers side, and neuer to mine heires of my fathers side: as on the contrary side if I haue lands or any hereditaments by discēt from my father or his bloud, they shal neuer discend to my heires by my mothers side.

Copartners.

Eschete.

And thus ye see a great difference in this behalfe, betweene purchased landes, and landes which discend from an auncestour.

Diuersitie.

If there bee three sons, and the middle sonne purchase lands and die without issue, the eldest shall haue the lande, and not the youngest.

Also it is a principle in our lawe, that none can bee mine heire of landes that I holde in fee simple, vnlesse hee bee mine heire by the whole bloud, that is to say, both by father and mother.

A ground of the law.

For

for if a mã hath iſſue two or three ſonnes by ſundry wiues, & the eldeſt purchaſeth lands in fee and dieth without iſſue, his halfe brethren, I meane thoſe that be not his brethren both by the fathers ſide, and mothers ſide, ſhal not haue the lande, but it ſhall go to his vncle. Likewiſe if a man hath by his firſt wife a ſonne & a daughter, and by his ſecond wife another ſonne, and the ſonne by the firſt wife purchaſeth landes in fee ſimple, & dieth without iſſue the ſiſter germayn, that is to ſay, both by fathers ſide and mothers, ſhal haue the lands by diſcẽt as heire to her brother, & not the ponger brother, for as much as ỹ ỹnger brother cannot in this caſe be heire to his elder brother, becauſe he is no brother germain vnto him. Otherwiſe it is of lãds or other hereditaments entailed as ſhalbe hereafter ſpecified.

Alſo if a man be ſeiſed of lands in fee ſimple & hath iſſue a ſonne and a daughter by one wife, and after the death of his firſt wife a ſonne by another wife, and dieth, and the eldeſt ſonne entreth into the lands, and after he dieth with out lawfull iſſue of his body, the daughter ſhal haue the lands and not the yongeſt ſonne, and yet the yongeſt ſonne is heyre to his father, but hee is not ſo vnto his brother. But if in this caſe the eldeſt ſonne had not entred after the death of his father, but had died before any entrie made by him, then ſhall not the ſiſter germaine enter, but the ponger brother is heire to his father, becauſe the eldeſt brother was neuer in actuall poſſeſſion which is requiſite to the perſon that clayneth to be heire collaterally.

But to the lineall heires, it ſufficeth that the aunce-

auncestour should haue beene heire if he had liued, I meane as thus. A man seased of lands and hath issue, a sonne and a daughter by one wife, and afterward a sonne by another, he dieth, and after his death the eldest sonne entereth not but dieth without issue before her can make actuall entre, here in this case his sister shall not haue the lands as heire to her brother, because her brother was not in actuall possession but the ponger brother shall haue them as heire to his father, yet if the eldest sonne in that case had left behind him issue of his body, whether it had beene sonne or daughter, this issue notwithstanding, that the Father of the issue was neuer possessed eyther actually or in the law, shal haue the lands and shall conuey his discent frō his father, the cause hereof is this, that the sonne or daughter is lineall heire, where as the brother, sister, vncle, aunt, &c. be heyres collaterall, and so yee shall obserue a diuersitie.

Diuersitie.

I call an actuall possession, when a man entreth in deed into lands, which be to him descended, but a possession in law is called when lands be descended to a person, & he hath not yet really & actually entred into thē. For notwithstanding that he is not in actuall possession, yet he is possessed in the law, that is to say, in the eye and consideration of the law he is deemed to be possessed, forasmuch as he is tenant for euery mans actiō that will sue for the said lands or els assuredly there should insue an intollerable incōuenience, as we shall more copiously open in another place. Ye shal furthermore vnderstand that this word inheritance is not onely to be accommodate

Hereditas quid sit.

modate and applied to that which commeth by diſcent or ſucceſſion from a mans auncеſtors or predeceſſours, but alſo to euery purchaſe in fee ſimple or fee tayle.

And note that a man can haue no larger or greater eſtate then fee ſimple.

Of Fee tayle. Chap. 12.

YE ſhall vnderſtand that before a certaine ſtatute called the ſtatute of Weſtm̃ ſecond there was no eſtate tayle but all was fee ſimple, either purely, that is to ſay without condition, or at the leaſt way conditionally as appeareth by the pretence of the ſaid eſtature, but now ſithence the promulgating of the eſtatute, diuers formes of eſtates tayle haue riſen. Weſtminſt. 2. Chap. 1. Deuiſion,

Fee taile is when it is preſcribed and limitted in the gift, what ſort of heires and by whom engendred ſhall inherite.

As for example, I giue lands to a man and to his heires & goe no further, this is a fee ſimple: but if I make a limitation, and adde of his body begotte, now it is a fee tayle, that is to ſay, a fee or inheritaunce limitted, preſcribed, determinate or aſſigned.

So yᵗ if I giue lãds to a man & to his heirs, he hath fee ſimple, but if I giue lands to him & to his heires of his body lawfully begotten, he hath but a fee tayle, forasmuch as I appoint, limit, preſcribe, and expreſſe what heires they ſhal be, and for lacke of ſuch heires the gifte ſhalbe expired and worne out, and the lands ſhalbe reuerted againe to the giuer or his heires.

But ye muſt obſerue and note that there bee two kindes of fee tayle. There is a generall

tayle

auncеſtour ſhould haue beene heire if he had liued, I meane as thus. A man ſeaſed of lands and hath iſſue, a ſonne and a daughter by one wife, and afterward a ſonne by another, he dieth, and after his death the eldeſt ſonne entereth not but dieth without iſſue before hee can make actuall entre, here in this caſe his ſiſter ſhall not haue the lands as heire to her brother, becauſe her brother was not in actuall poſſeſſion but the ponger brother ſhall haue them as heire to his father, yet if the eldeſt ſonne in that caſe had left behind him iſſue of his body, whether it had beene ſonne or daughter, this iſſue notwithſtanding, that the Father of the iſſue was neuer poſſeſſed eyther actually or in the law, ſhal haue the lands and ſhall conuey his diſcent frō his father, the cauſe hereof is this, that the ſonne or daughter is lineall heire, where as the brother, ſiſter, vncle, aunt, &c. be heyres collaterall, and ſo yee ſhall obſerue a diuerſitie.

Diuerſitie.

I call an actuall poſſeſſion, when a man entreth in deed into lands, which be to him deſcended, but a poſſeſſion in law is called when lands be deſcended to a perſon, & he hath not yet really & actually entred into thē. For notwithſtanding that he is not in actuall poſſeſſion, yet he is poſſeſſed in the law, that is to ſay, in the eye and conſideration of the law he is deemed to be poſſeſſed, foraſmuch as he is tenant for euery mans actiō that will ſue for the ſaid lands or els aſſuredly there ſhould inſue an intollerable inconuenience, as we ſhall more copiouſly open in another place. We ſhal furthermore vnderſtand that this word inheritance is not onely to be accommodate

Herodites quid ſit.

modate and applied to that which commeth by diſcent or ſucceſſion from a mans auncеſtors or predeceſſours, but alſo to euery purchaſe in fee ſimple or fee tayle.

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Fee taile is when it is preſcribed and limitted in the gift, what ſort of heires and by whom engendred ſhall inherite.

As for example, I giue lands to a man and to his heires & goe no further, this is a fee ſimple: but if I make a limitation, and adde of his body begotte, now it is a fee tayle, that is to ſay, a fee or inheritaunce limitted, preſcribed, determinate or aſſigned.

So yᵗ if I giue lands to a man & to his heirs, he hath fee ſimple, but if I giue lands to him & to his heires of his body lawfully begotten, he hath but a fee tayle, forasmuch as I appoint, limit, preſcribe, and expreſſe what heires they ſhal be, and for lacke of ſuch heires the gifte ſhalbe expired and worne out, and the lands ſhalbe returned againe to the giuer or his heires.

But ye muſt obſerue and note that there bee two kindes of fee tayle, There is a generall

tayle

tayle and there is a ſpeciall tayle.

Fee tayle generall is where landes be giuen to a man and to his heires of his body begotten without any mencioning & expreſſing by what woman they are begotten.

Generall taile.

And therefore if a man be tenant in the generall taile of lands, & taketh a wife & hath iſſue by her, and ſhe dieth, and afterward he taketh another wife, of whom hee hath alſo other iſſue by her, either of theſe iſſues is inheritable to this land intailed. But if I expreſſe in the guift by what woman the heires ſhalbe procreated & ingendred, then it is an eſpecial taile, as for example to make the thing plaine, if lands be giuē to a man & to his heires of his body lawfully begotten by Margarete his wife, this is an eſpecial taile, for the iſſue of him begotten by an other woman, ſhall neuer inherite by force & vertue of the taile. Likewiſe it is if lands bee giuen to a woman & to the heires of her body lawfully begotten (& ſhew not by what man) this is a generall taile, but if I go forward and ſay by ſuch a man her huſband, then it is an eſpeciall taile.

Eſpeciall taile.

Alſo if I giue landes to a man & to his wife, and to the heires of their two bodies lawfully begotten: this is an eſpecial taile, as well in the huſband as in the wife.

Semblable it is, if a man giueth lands to another man with his daughter, or kinſwoman in franke mariage, this word (franke mariage) implieth an eſtate taile eſpeciall, and in this caſe as well the man as the woman hath an eſtate in the ſpeciall tayle.

Franke mariage.

But if I giue landes to a man and to ſuch a woman

woman, & to his heirs that he hath begot of her, here the woman hath an estate but for terme of her lyfe, and the husband an estate in the speciall taile. And likewise it is in the womans behalfe, as if I giue lands to a man & to his wife, and to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the speciall taile. But in both cases, if I had said to the heires, & not to his or her heires, then should either of thē haue had an estate in ꝑ special taile, because this word heires is aswell referred to the one as to the other.

Discente by heires males.

We shall also vnderstand, that if landes be giuen to a man, and to the heires males of his bodie, this is an estate tayle, and in this case, the heyre female shall neuer inherite.

Also, if a man hath issue and dieth, and landes be giuen to him and to his heires of his bodie begotten, this is a good estate tayle, although the Father were dead at the tyme of the gifte. Finally it is to be noted, that of landes which a man hath in fee simple the possession of the brother, shall cause the sister germaine, that is to say, the sister both by the Fathers side and mothers to inherite, and in this case the brother by the halfe bloud shall not inherite, as heretofore was said, but of landes which be entailed otherwise it is. Therefore if a man be seased of landes in the generall tayle, and hath issue by his first wife a sonne and a daughter, and also a sonne afterward by another wife, and dieth, and the eldest sonne entreth into the landes, and after dieth, the sister germaine to the eldest sonne shall not haue the landes, but the yonger brother of

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the halfe bloud, because whosoeuer shall inherite land or any other hereditamẽts in tatle must claime them as next and immediat hetre not to him that dieth last seased of the lãds, but to him to whom the lands were first giuen, vnto whom in the case before remẽbred, is the sonne & heire and not the daughter.

Diuersitie. Thus yee shall marke a great diuersitie betweene the forme of succession in the lands of fee simple, and the forme in fee tayle.

Tenant after possibilitie of issue extinct. Chap. 13.

When lands tenemẽts or other hereditaments, be giuen to a mã and to his wife, & to the heires of their two bodies lawfully begottẽ, if in this case either of thẽ chance to die before they haue issue betweene thẽ, he or she ỹ ouerliueth, is still tenant in tayle, but without possibility of any issue ỹ can be heire to these lands or hereditamẽts thus intailed, & for this cause he or she thus ouerliuing, is called tenant in tatle after possibilitie of issue extinct, for in such a tenãt is all possibilitie of issue ỹ may be inheritable to these lands by force of the gift in tatle vtterly extinct or quenched, & by his or her death the estate tayle shal expire, cease, & be abolished for euer, & shal reuert and turne againe to the giuer or donour from whence it came.

Disp unishable of waste.

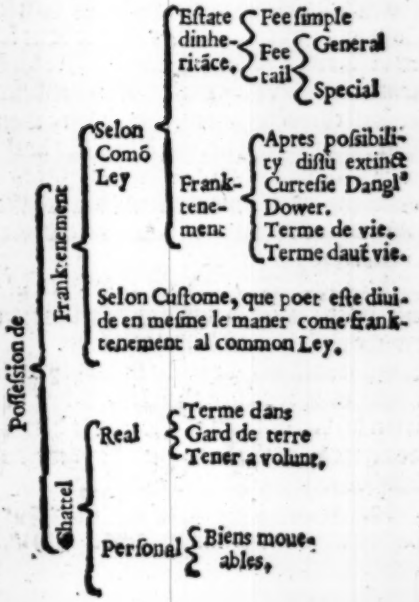
Yet forasmuch as the tenaunt after possibilitie of issue, had once an inheritaunce in him, hee shall not be punished by an action of waste, though he maketh neuer so muche waste in the landes and tenements, whereas yet in effect he is but a tenant for terme of life. But if this te-

nant

uant doth alien, in fee, such lands, he in the reuersion may enter for the forfaiture. Forfaiture.

And this for estates at this present time shall suffice. But to the intent that yee may the more easely comprehend all the members of the deuision of possessions and estates which men may haue in lands, tenements, and other hereditaments, it shall not be euil done to set foorth as it were in a table before your eyes the deuision thereof which is this.

A figure of the diuision of Possessions.



HEtherunto I haue made a compendious and shorte declaration of estates of all sortes. But where I said, that among sisters there is no prerogatiue or preheminence concerning the enheritting of their auncestours lands, but that they shall be altogether inheritours, and make as it were but one heire it is expedient to make a further declaration & processe in this behalfe, and to shewe how and in what maner this partition shalbe made.

Diuision of parceners at the Common law, & parceners by custome.

But yee shall vnderstande, that there bee besides parceners at the Common lawe, which be onely sisters, also parceners by custome, which is amongst brothers contrary to the course of the Common lawe, and this custome is in some places of Kent, & in other places where landes and tenements be of the tenure of Gauelkind.

Yee shall therefore know, that when a man is seased of land in fee simple or fee taile, & hath no issue but daughters, & die, & the daughters doe enter into the lands thus descended vnto them, now they be called parceners or coheires, & by a writ called De partitione facienda, brought by one of them against the others, they shall be cõstrained by the lawe to suffer an egall partition to be made of the lands betweene them.

Writ De partitione facienda.

Now partitiõ may be made in sundry wates. One way is when they themselues doe make partition betweene them of the whole heritage, and do agree vnto the same, and do enter euery one into her parte so allotted vnto her.

Partition in diuers maners.

Another wate is when by all their agreements & consent one common friend doth make the

the partition. In which case the eldest sister shal haue the first electiō, & after her the second sister, & so forth. But if they agree that the eldest sister shall make the partition, & she maketh it, thē the eldest shall not chose first, but shall suffer all her sisters to chose before her, as it is thought.

There is also an other forme of partition, which is egally to deuide the lands into so many parts as there be coheires or parceners, & to write euery part so diuided in a seuerall scroule of paper, & so put the said scroules in a bonet, or to inclose thē seuerally in balles of ware, & then the eldest sister to chose which ball she will, or to put her hand into the bonnet, & to take a scroul, & to holde her to her chaunce and alotment, and so consequently euery sister after other.

And yee shall note, that partition by agree- Note
ment may as wel be made by nude & bare words without writing as by writing.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called de particione facienda, against them that refuse partition to compell the same to suffer partition to be made accordingly, and then by the iudgement of the court, the Sheriffe by the ferement and oath of twelue men shal make partition betweene them, & shall assigne to ech sister her portion as he shall thinke good, without giuing any election of chotse to the eldest. A writ, De *particione facienda*.

And if two Manours or meeses happen to discend to two sisters & the mannors bee not of egall value, then may she, to whom the lesse manour or meese is alotted, haue assigned vnto her

a rent proporcionably out of the other mannour for the which rent shee and her heires may distrayne of common right, though they haue no writting thereof.

Distresse of cõmon right.

Finally, ye shall vnderstand, that if a man be seised of lands in fee simple, and hath issue two daughters, & giueth with one of his daughters to another man that shall marry her, the third or fourth part of his lande in franke mariage and dieth, if in this case the daughter that is in this wise bestowed and aduaunced, will haue her portion of her fathers heritage, shee must put her land giuen vnto her in frank mariage in Hochpot new againe. I meane she must be contented to suffer her said lands to be cõmixte & mingled with the other lãds of which her father died seased in fee simple, so that an equal diuisiõ may be made of the whole, or els she shall haue no part of those landes of which her father died seased. But if her father had made vnto her a common gift in taile, or feoffement in fee, shee should not need to put her lands in Hochpot, but may very well keepe and retaine them still, & also haue as good part of the rest of the lãds of which her father died seased, as her other sister or sisters haue. For a gift in franke mariage, is accompted, the most free and most liberall gift that can be, and that gift which the lawe iudgeth to bee onely for the aduancement and bestowing of the daughter, where as feoffementes in fee simple, and also common giftes in taile bee accustomably for other causes, & for the aduantage rather of the giuer, or feoffour then of the taker.

Hochpot.

Franke mariage.

Also if parceners make partition of landes being

being within age that partition is void.

And if parceners in fee simple make partitiō and the part of the one is better then the other being of full age of xxi. yeares, then the partition is good and can not bee defeated, but if it be of landes in fee taple, the one part beyng better then the other, that partition may bee defeated by their heires.

Of Iointenants. Chap. 15.

HEtherunto verily haue we spoken of Coheires called Parceners of the common Lawe, which as is heretofore declared, doe come to Landes and other Hereditamentes iointly by the course, operation and acte of the lawe. Now shal wee speake somewhat of them which either ioyntly or seuerally come to lands, tenementes, or other hereditamentes by their owne purchase, acte, procurement and working. And of these they that come to them by ioynt title, way or colour, be called iointenants, but they that come by seuerall tytles, waies, or colours, to lands or tenements bee named tenauntes in common.

So then, if a man being seased of landes or tenements or other hereditaments, shall thereof enfeoffe two, three, foure, or more, to haue & to holde to them in fee simple, fee taple, or for terme of their liues, or for terme of an others life, these persons so enfeoffed and seased, bee called Iointenants. Also if twoo or moe doe expell and disseise another man of any landes or tenementes to their owne behooue and vse, these disseysours and wronge doers are nowe Tenants in common.

become iointenants, because by their owne acte they come iointly to this land. But if they doe disseise another man to the vse onely of one of them, in this case they be not iointenants, but he to whose vse the disseisin is made is tenaunt alone of the same, and the others haue nothing in the tenancy, but bee called aydours or coadiutors to the disseisin.

Disseisin

And ye shal vnderstand, that a disseisin is properly, where a man entreth into any landes or tenements there where his entrie is not lawfull, and putteth out him which hath the freehold of the same.

Survivour taketh place.

And ye shall furthermore know, that the nature of iointenancie is, that he which survyueth & ouerliueth ỹ other, shal haue to himselfe alone the whole & entire tenaunce according to that estate which hee should haue had if the iointure had beene continued, as (for exãple) three iointenants be of lands in fee simple, & the one hath issue & die, in this case the two which do ouerliue their fellow, shal haue the whole lands betweene thẽ, and the issue of him that is departed getteth nothing. And if the second iointenaunt hath also issue and die, the third which hath ouerliued them both, shall now haue and enioy the whole to him and to his heires for euermore.

Diuersitie.

But otherwise it is of coheyres which in our law be called parceners. For if there bee three such coheires & parceners, and before any partitiõ made, the one haue issue a sõne or a daughter & dyeth, her portion shall discend & fall to his childe, and shall not runne amongest the other ioint heires or coparceners. Howbeit if such

parcener

parcener or coheire had died without issue, then should his portiō haue discēded to his coheires. But howe not by force of surviuour or ouerliuing, which in latin is called Ius acrescendi, but by very discent, for where any of the coheyres die without issue, who can be heire to him or her so dying, but the other coheires to him or her so dying, or the rest of ỹ coheires if there be many.

And like as this right of surviuor or ouerliuing, holdeth place amongest iointenauntes of lands and tenementes, so in like manner it holdeth place amongst thē which haue ioint estate or possessiō with others of chattels whether they be reall or personall. As (for example) if a lease of lands or tenemēts be made to many for terme of certain yeres the ouerliuer or ouerliuers, shal haue the whole during the terme by force of the same lease. So of chattels personall, if an horse, oxe, graine, or other such personall chattel be giuen to many, hee which ouerliueth shall haue the same alone. In semblable wise it is of debts and dueties. For if an obligation be made to many for one debt, and of some other couenants & contracts, the law is likewise so.

Iointenants of reall and personall goods.

Also some iointenantes may bee which may haue ioint estate and be iointenauntes for terme of their liues, & yet haue seuerall inheritaunces. As where lands be giuē to two men and to the heires of their two bodies engendred, in this case, these two persons haue ioynt estate for terme of their two lyues. And yet they haue seuerall inheritances. For if the one haue issue and die, the other that suruiueth shall haue all by force of the surviuour for terme of his life,

Iointenants of seuerall inheritances.

And if he that suruiueth hath also issue and die, then the issue of the one shall haue the halfe of the lands, & the issue of the other shal haue the other halfe, & they shall hold the lande betweene them in common, and shall not be iointenants, but tenãts in cõmõ & the cause & reason why such donees in such cases haue a ioynt estate for terme of their liues, is for that at the beginning the lands were giuẽ to thẽ two which words without more saying, make a ioint estate to them for terme of their liues, for if a man will let land to another by deede or without deede, not making mention what estate he hath, & of this maketh liuerie of seisin, in this case the lessee shal haue an estate for terme of his life. And if he haue no liuery of seisin, he is but tenant at will. And so for asmuch as the lands were giuẽ vnto them, they haue a ioynt estate for terme of their liues. But the cause why they haue seuerall inheritance, is this for that they cannot by possibilitie haue an heire betwene thẽ engendred as a mã & a womã may haue, wherfore the law will that their estate & their inheritance shalbe such as reason wil after the forme and effect of the wordes of the gift and that is to the heires that the one engendred of his bodie by and of his wiues, & to the heires that the other engendreth of his bodie by any of his wiues. So it behoueth by necessitie of reason, that they haue seuerall inheritances. And in such case if the issue of one of them after the death of thẽ both doth die, so that he hath no issue aliue of his body engẽdred, then the donour which gaue the lande, or his heires may enter in the halfe as in his reuersion though the other

Tenants in common.

hath

hath iſſue aliue. And the cauſe is that forasmuch as the inheritances be ſeuerall, therefore the reuerſion in the law is ſeuered, & the ſuruiuour of the iſſue of the other ſhall hold no place to haue the whole. And as it is ſaid of males in ỹ ſame maner it is where lãds be giuen to two females and to the heires of their two bodies begotten.

Surviuour holdeth no place

Alſo if lands bee giuen to two & to the heires of one of them, this is a good iointenancy, and the one hath a freehold, and the other hath a fee ſimple, & if hee which hath fee ſimple die, he that hath the freehold ſhal haue the whole by the ſuruiuour for terme of his life.

And if theſe two iointenauntes ioyne in a gift in the tatle to a ſtranger, reſeruing a rent to him that hath an eſtate but for his life, this reſeruation is void to make a tenure. Likewiſe it is where tenements bee giuen to two, & the heires of the bodie of one of them engendred the one hath a freehold, and the other fee tatle.

Rent charge graunted by a ioyntenant.

Note, if two iointenantes bee ſeaſed of an eſtate of fee ſimple, and the one graunteth a rent charge by his deed to another, out of that which to him belongeth, in this caſe during the lyfe of the grauntour, the rent charge is good and effectuall, but after his deceaſe the rent charge is void, as to charge the lands, for he that hath the land by the ſuruiuour, ſhall hold all the land diſcharged, the cauſe is for that hee that ſuruiueth claymeth to haue the lande by the ſuruiuour and not by diſcẽt of his fellow. But otherwiſe it is of parceners or coheires, for if there be ij. parceners in fee ſimple & before any particiõ be made, ỹ one chargeth that, that to him be-

Diuerſitie.

longeth by his deede of a rent charge and dieth without issue, here that which to him belongeth discēdeth to the other parcener, & in this case the other parcener shal hold ꝑ land charged because he cōmeth to the halk by discent as heire. Also if there be two iointenāts in fee simple, within one borough where ꝑ lands & tenements within the same borough be diuisible by testamēt, if the one of the said iointenants deuise that which to him belongeth, by testamēt & die, this deuise & legatiō is void. And the cause is for that, that no deuise may take effect till after the death of the testator which bequeathed & deuised the same, & by his death all the land incontinent cōmeth by the law to his fellow that suruiueth by the suruiuor which neither claymeth nor hath any thing in the land by the deuise, but in his owne right by the suruiuor after the course of the law, and for this cause such a deuise is void.

Deuise by testament.

But otherwise it is of parceners seased of tenements diuisable in such case of deuise for the cause above remembred. And it is commonly sayde, that euerie ioyntenaunt is seased of the land that hee holdeth ioyntly per my & per tout, that is, throughout and by all. And this is as much to say, that hee is seased by euerie parcell and by all which saying is true, for in euerie parcell and parte, and throughout all the landes and tenements hee is iointly seised with his fellow. And therefore if the one ioyntenant make a feoffement to his cōpanion, that is void because hee can make no liuery of season to him. Also if two iointenāts be seased of certain lands in fee simple, and thone letteth that, that to him belon-

A ground of the law.

Diuersitie.

belongeth to a ſtraunger for terme of xl. yeares and dieth within the terme, in this caſe after his death the leſſee may enter and occupy the halfe to him letten during the ſaid terme though the leſſee neuer had poſſeſſion of it in the life of the leſſour by force of the leaſe. And the difference betweene the caſe of the grant of a rent charge and this caſe is this that in the grant of rent charge by a ioyntenaunt the lands or tenements, abide alway as they were afore without that, that any hath right to haue parcell of the tenements but themſelues & the tenemẽts abide in ſuch plite as they were before the charge. But where a leaſe is made by a ioyntenant to another for terme of yeeres, incõtinent by force of the leaſe, the leſſee hath right in the ſame land, that is to ſay, of all that, that to his leſſour belongeth by force of the ſame leaſe during his terme. And if the leſſour in this caſe die, the other ioyntenant ſhall haue the rent or terme during the ſaid terme, becauſe the reuerſion is come to him by ſuruiuour. Finally if a ioynt eſtate be made of lande to the huſbande and wife, and to the third perſon, in this caſe the huſband & the wife haue not in the lawe in their right but the halfe, and the third perſon ſhall haue as much as the huſband & the wife haue, that is to ſay the other halfe.

Diuerſitie betweene a grant of a rent and leaſe.

And the cauſe is, for that the huſbande and wife be but as one perſon in the eye of the lawe, and it is here in like caſe as if an eſtate be made to two iointenants where the one hath by force of the ioynture the one halfe, & the other the other halfe. In ſemblable wiſe it is where an eſtate is made to the huſband and wife, and to other two men,

men, in this case the husband and the wife haue not but the third part, and the other two mē the other two parts.

Also if two or three together disseaseth another of lands and tenements to their owne vses then such disseisors be called ioyntenants. More shal be said of this matter touching ioyntenants in the next Chapiter.

Tenants in common. Chap. 16.

TEnants in common (as I said before) be they that haue lands or tenements in fee simple, fee tayle, or for terme of lyfe which haue such lands and tenements by seuerall titles, and not by one ioint title and none of them knoweth that which is seuerall to him. And in this case they ought by the lawe before partition made betweene them to occupy such lands and tenements in common, & vndeuided, and to take the profits in cōmon. And because they come to such lands and tenements by seuerall titles, and not by one selfe ioint title, and their occupation and possession in the same is among them in cōmon, they be called tenaunts in common, or tenants pro indiuiso. As for example, if a man enfeoffe .ij. ioyntenaunts in fee simple, and the one of them alieneth that, that to him belongeth to another in fee, now the other ioyntenant and he to whom the alienation was made, be tenants in common, for that they be seased of such tenements by seuerall tiles, for the one commeth to the one halfe by the feoffement of the ioyntenant and the other hath the other halfe by force of the first feoffement made to him and to his first fellow, and so they be in by seuerall titles and by

seue-

ſeuerall feoffements.

And it is to wit, that when it is ſaid in any booke, that a man is ſeiſed in fee without more ſaying or addition, it ſhalbe vnderſtood fee ſimple, for it ſhall not be vnderſtood by ſuch a word in fee, that a man is ſeaſed in fee taile, except there be put in it ſuch addition in taile. Diffinition of fee onely.

Alſo if three iointenants be and the one of thē alieneth that which vnto him belongeth to another in fee, in this caſe the alienee is tenaunt in common with the other two iointenants. But yet the other two iointenants be ſeaſed of the ⅔. parts iointly, and of theſe two parts the ſuruiuor betweene them holdeth place. Iointenants.

Alſo if there be two iointenāts in fee, and the one giueth that, that vnto him belongeth to another in the taile, the donee and the other iointenant be tenants in common. But if the lands be giuen to two men, and to the heires of their two bodies engēdred, the donees haue a ioint eſtate for terme of their liues, and if eche of them haue iſſue and die, their iſſues ſhall hold in common.

Alſo if lands be giuen to two men to haue & to hold the one halfe to the one and to his heires, and the other halfe to the other & to his heires, they be tenants in common.

Alſo if a man ſeaſed of certaine lands enfeoffeth another in the halfe of the ſame land without any ſpeach of aſſignement or limitation of the ſame halfe in ſeueraltie, at the time of the feoffement, then the feoffee and the feoffour ſhall hold their parts of the land in common.

And as it is of tenants in common of lands or tenements in fee ſimple, fee tayle, euen ſo it is

Iointenants, is of tenaunts for terme of lyfe. Therefore if two iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, and the other iointenant letteth that which to him belongeth, to an other for terme of lyfe also, these two lessees be tenants in common for terme of their liues. Also if a man let landes to two men for terme of their liues, of whom the one granteth all his estate to another, then that other tenaunt for terme of lyfe, and he to whom the graunt is made, shalbe tenants in common during the time that both the lessees be alliue.

Note, if there be two iointenants in fee, and that one letteth that, that vnto him belongeth to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, bee tenants in common. And vpon this Question. case a question may rise as thus. Let the case be that the lessor hath issue a dieth, lyuing the other ioyntenant his felow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall discend to the issue of the lessour, or whether the other iointenant shall haue it by the suruiuour or noe. And some haue said that the other iointenaunt shall haue the reuersion by the suruiuour, for as much as when the iointenants were iointly seised in fee simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though he hath seuered the frankte-nemēt of that, that to him belongeth by the lease, yet he hath not seuered the fee simple.

Wnt the fee simple abideth to them iointly as it was before. And so it seemeth vnto them, that the

the other iointenant which ſuruiueth ſhall haue the reuerſion by the ſuruiuour. But other haue thought the contrary, and this is their reaſon. When one of the iointenants letteth that which vnto him belongeth to another for terme of life, by ſuch leaſe the franktenement is ſeuered from the iointure. So that the reuerſion that is dependant vnto the ſame franktenement, is ſeuered from the iointure. Furthermore if the leſſor had reſerued to him a yeerely rent vpō the leaſe, the leſſour onely ſhould haue the rent, which is a proofe that the reuerſion is onely in him, and that the other hath nothing therein.

Also if the tenant for terme of life were impleded and make default after default, the leſſour ſhalbe onely hereupon receiued to defende his right and not his fellowe, which prooueth the reuerſion of the halfe to be only in the leſſor and ſo conſequently, if the leſſour die, liuing the leſſee for terme of life, the reuerſion ſhall diſcend to the heires of the leſſor, and ſhall not come to the other iointenāt by the ſuruiuor after theſe mens opinions, yet it is doubtful. But in this caſe, if the iointenaunt that hath the franktenement, haue iſſue and die, liuing the leſſour and the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of fee by diſcent, foraſmuch as the franktenement may not by nature of the iointure be annexed to a reuerſion, and it is certaine that he that made the leaſe was ſeaſed of the halfe in his demeſne as of fee, and that none ſhall haue any iointure in his franktenement. So that this ſhall diſcend to his iſſue. Reſite. Quære.

If three ioint enants be, and the one releaſeth

by

by his deed to one of his felowes all the right he hath in the lande, then hath he to whom the re-
Release. lease is made the third part of the lands by force of the release, and he and his fellow shall holde the other two parts iointly. And as to the third part that he hath by force of the release he holdeth it with himselfe & his fellow in common.

And it is to wit, that sometime a deede of release shall take effect to put the state of him that made the release in him to whom the releas is made as in the case aforesaid.

Also if a ioynt estate be made to the husbande and wife and to a third person, & the third person releaseth his right that hee hath to the husband: then hath the husband the halfe which the third person had, and the wife of this hath nothing. Semblably if the third person had released to the wife not naming the husbande in the release, then should the wife haue the halfe that the third person had, and the husband nothing of this but in the right of his wife, because such release shall enure to put the estate in him to whom it was made of all that, that belongeth to him that made the release. Againe in some case a release shall enure and serue to put all the right that a man hath that made that release in him to whom it is made. As a man being seised of certaine lands is disseised by two disseisours if the person disseised by his deed releas all his right to one of the disseisours, then he to whom the release is made shall haue and hold all to him alone and put out his fellowe out of the occupation of it. And the cause is for that the two dis-
Disseisours. seisors were seased by wrong by them done against

gainſt the Law, & when one of them getteth the releaſe of him that had right to enter, this right reſteth in him to whom the releaſe is made, and in ſuch plite as if he that had the right had entred & enfeoffed him of the ſame. And the cauſe is, for that he that before had an eſtate by wrong hath now by the releaſe a rightfull eſtate.

Releaſe by way of extinguiſhment.

And in ſome caſe a releaſe ſhall enure & take effect by way of extinguiſhment, and ſuch a releaſe ſhall helpe the iointenant to whom the releaſe was not made, aſwell as him to whom it is made, as if a man be diſſeiſed, and the diſſeiſour maketh a feffement to two men in fee, if the perſon diſſeiſed releaſe to one of the feoffees in fee by his deed, then ſuch releas ſhall enure to both the feoffees becauſe the feffees haue their eſtate by the Law, that is to ſay, by the feoffement and not by wrong done to any other.

A releaſe ſhall enure to him in the remainder.

And in like manner if the diſſeiſour make a leaſe to a man for terme of life, the remainder ouer to another in fee, if the diſſeiſee will releaſe to the tenaunt for terme of life all his right this releaſe ſerueth aſwell to him in the remainder, as the tenant for terme of life. And the cauſe is for that the tenaunt for terme of life commeth to his eſtate by the courſe of the law, and for this cauſe the releaſe ſhall enure and take effect by way of extinguiſhment of the right of him that hath releaſed. And by this releaſe the tenaunt for terme of life hath no greater eſtate then he had before the releaſe made vnto him, and yet the right of him that releaſed is al vtterly extinct and gone. Wherefore forasmuch as ſuch a releaſe cannot enlarge the eſtate of the tenant for

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terme of life, it is reason, that it shall serue him in the remainder.

Also if there be two parceners, and the one alieneth his part to an other: the other parcener and the alienee be tenants in common.

Tenants in cõmon by title of prescription

Furthermore, tenants in common may be by title of prescription if that one & his auncestors or they whose estate hee hath in the halfe haue holden in common the same halfe with the other tenant that hath the other halfe, & with his auncestours or them whose estate he hath as vnde-uided time out of mind. And ye shall marke that in some case tenaunts in common, ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action, for if there be two tenants in cõmon & they be disseised, they ought to haue against the disseisor two assises and not one assise. For euery of them ought to haue an assise of his halfe, because they were seised by seueral titles, but otherwise it is of iointenãts, for if there be yr. iointenants & they be disseised, they shall haue in all their names but one assise, because they haue but one ioint title.

Actiõs seueral.

Assise.

Assise.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterwarde the other two be disseised of the whole, in this case they shall haue in both their names one assise of the two parts. And as to the third parte he to whom the releas was made ought to haue thereof an Assise in his owne name, because as to the third part he is tenant in common.

Diuersity.

Also as to sue actions that touche the realtie, there is a diuersity betweene parceners that are

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in by diuers discents, and tenants in common. For if a man seised of certaine lands in fee, hath issue two daughters and die, and they enter into the lands as coheires, and eche of them haue issue a sonne and die without partition made betweene them, so that the one halfe discendeth to the sonne of thone parcener, and the other halfe to the sonne of the other, & they enter & occupy in common, & be disseised, in this case they shal haue in their two names one assise, & not two assises. And yet the cause is, though they come in by diuers discents, yet they be coheires & parceners. Also if two tenants in common of certain lands in fee, giue the same to another man in the tayle, or let it to an other for terme of life, yeelding an annuitie or certaine rent, or a pound of Pepper, or an hauke, or an horse, & they be seised of these seruices, and afterward all the rent is behind, & they distraine for it, and the tenant maketh rescous, in this case as to the rent and the pound of Peper, they shal haue two assises, and as to the hauke & the horse but one Assise. And the cause why they haue two Assises as to the rent and pound of Peper is for that they were tenants in common by seuerall titles, and when they made a gift in the taile or lease for terme of life, sauing and reseruing to them the reuersion and yelding to them certaine rent: this reseruation is incident to their reuersion. And because their reuersion is in common and by seuerall titles, euen as their possession was before the rent and other things which may bee seuered, and which were to them reserued vpon the gift or vpon the lease which bee incident by the Lawe to the re-

Rescous.

uerſion, therefore ſuch thinges ſo ſeuered bee of the nature of the reuerſion.

Plaint in aſſiſe. Wherefore it behoueth that the rent and the pound of Pepper which may be ſeuered to bee then in common by ſeuerall titles. And of this they ſhal haue two Aſſiſes, and euery of them in his aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pounde of Pepper. But of the hauke and the horſe, which cannot bee ſeuered, they ſhall haue but one Aſſiſe, for it were an abſurditie and thing inconuenient to make a plaint in Aſſiſe of the halfe of an Hauke, or of the halfe of an horſe. In like manner it is of the other rents and ſeruices that tenaunts in common haue in ground by diuers titles.

Perſonall action. And ye ſhall vnderſtand that concerning actions perſonals, tenaunts in common ought to haue them ioyntly in all their names, that is to ſay of treſpaſſe or of offences that touch their tenements in cõmon, as of breaking of their houſes, breaking of their cloſſes, & paſtures, waſting & defouling of their graſſe, cutting of their woodes & of fiſhing in their ponds & ſuch other, and they ſhall recouer iointly damages, becauſe the action is in the perſonaltie and not in the realtie.

Damage.

Tenants in common ſhall haue one actiõ of debt. Alſo if tenauntes in common make a leaſe of their tenements to an other for terme of yeeres, yeelding vnto them yerely a certaine rent, if the rent bee behinde, they ſhall haue one action of debt againſt the leſſee and not diuers actions, becauſe the action is in the perſonaltie.

But in an auowrie for ẏ ſaid rent, they ought to be ſeuered, becauſe it is in ẏ realty, as be aſſiſes.

It

Of Chattels. Chap. 17.

IT is to be knowen that as there be tenaunts in common of lands or tenements: so there be tenants in cõmon of possessions & property of chattels, as well real as personal. Of reall, as if a lease be made of certain lands to two men for terme of twentie yeares, and when they be thereof possessed, the one graunteth that that vnto him belongeth during the terme to another, he to whom the graunt is made, and the other shall hold and occupie in common.

Iointenants of a ward.

Also if two toyntenauntes haue the warde of the body & of the landes of an heire within age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then he to whom the grant is made, and ỹ other that granteth not, shal haue & hold it in common.

Of chattels personals: as if two haue a toynt estate eyther by gift or by buying of an horse, or of an oxe, or such like, and the one of them graunteth that, that to him belongeth, heere shall the grauntee, and hee that graunted not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personals in common and by diuers titles if one of them die, the other that suruiueth shall not haue his fellowes part by the suruiuour, but the executours of him that dyeth shall holde and occupie it with him that suruiueth in like forme as their testatour did, or ought in his life, forasmuch as their tytles and rightes were seuerall. Also in the case aforesaide, if two haue an estate in common for terme of yeares, and the one doeth

occupie all and put the other out of his poſſeſ-
ſion and occupation, then ſhal he that is put out
A writ de Eiectione firmæ. haue againſt thother a writ de Eiectione firmæ
for the halfe. In ſemblable manner where two
hold the ward of lands or tenements during the
nonage of a childe, if one ſhall put out the other
of his poſſeſſion, hee that is out ſhall haue a writ
De Eiectione cuſtodiæ. de Eiectione cuſtodiæ of the halfe, becauſe theſe
things be chattels reals and may bee appor-
tioned and ſeuered. But no action of treſpas ly-
eth for one againſt the other (as for example,
Quare clauſum fregit & herbam ſuam concul-
cauit & conſumpſit nor ſuch like actions) foraſ-
much as each of them may enter and occupie in
common. But if two bee poſſeſſed of chattels,
perſonals in common by diuers tytles as of an
Horſe, an Oxe or a Cowe, if the one take it all to
himſelfe out of the poſſeſſion of the other, the o-
ther hath none other remedie, but to take it a-
gaine from him that hath done him the wrong,
when he may ſee his time.

In like manner of chattels reals, which may
not bee ſeuered, as in the caſe aforeſaid, where
two be poſſeſſors of ỹ wardſhip of the body of a
child within age, if one of thē ſhal take ỹ childe
out of ỹ poſſeſſiō of thother, the other hath no re-
medy by any actiō at ỹ law, but to take the child
out of ỹ others poſſeſſiō, when he ſeeth his time.

Fourme of pleading. Finally, ye ſhall vnderſtande that when a
man in pleading and declaring his cauſe, will
ſhew a deede of feoffement made vnto him, or
a gift in fee tayle, or a leaſe for terme of life of
any lands or tenements he ſhall vſe his termes
in this wiſe, and ſay, by force of ſuch feoffement,
gift,

gift, or leafe he was ſeiſed &c.

But where a man wil declare or plead a leaſe or graunt made vnto him of a chattell reall or perſonall, then he ſhall ſay by force of which hee was poſſeſſed.

Of partition to bee made by iointenants and tenants in common enacted by 2. ſtatutes made, the one in Anno 31.H.8.& the other in 32.H.8.Cha.18.

ALl iointenants and tenantes in common of any eſtate of inheritance in their owne rightes or in the right of their wiues of any lands or hereditaments within this Realme of Englande, Wales, or the Marches of the ſame, ſhall and may be compelled to make partition betweene them of the ſame which they ſo hold as iointenantes or tenantes in common by a writ de particione faciẽda, to be deuiſed in the Chauncery in like manner as coparceners are compelled to doe, & the ſame writ to be purſued at the cõmõ law. And after ſuch partition made euerie of the ſaid iointenants & tenants in common, ſhall and may haue aide of the other: or of their heires, to thintent to dereigne the warrantie paramount and to recouer for the rate as is vſed betweene coparceners, after partitiõ made by the order of the common law.

Writ de Particione faciẽda

Aide praied.

Item in the xxxij. yeare of king Henrie the eight, Chap. 32. It is further enacted that all iointenants & tenantes in common which holde iointly or in common for terme of life, yeare or yeares or iointenants or tenãts in cõmon where one or ſome of them haue an eſtate for terme of

like or yeares with other that haue an eſtate of inheritãce or freehold in any lands or other hereditamentes ſhall bee compellable by writ of Partition to be purſued out of the chaūcery vpõ their caſes, to make ſeueraunce and partition of all ſuch lands and hereditaments as they holde iointly or in cõmon for terme of life, or liues, yere or yeres, or where one or ſome of thẽ hold iointly or in cõmon for terme of life or yeres with other ỹ haue an eſtate of inheritãce of free holde. Prouided that no ſuch ꝓtition nor ſeuerance, be hurtful to any perſon other then ſuch as be parties vnto the ſaide partition their executors or aſſignes.

Of Conditions. Chap. 19.

FOr aſmuch as euerie eſtate is eyther pure or conditionall, it were not amiſſe to make ſome declaration of the nature and efficacie of conditions. Wherefore ye ſhall vnderſtand that of conditions, ſome bee actuall conditions, and be called expreſſe conditions, or conditions in deed, and other ſome bee conditions in lawe, which be called in Latin conditiones tacitæ ſiue conditiones implicitæ, becauſe they bee ſecretly employed by the law and not expreſſed.

Diuiſion. Conditions in deede be ſuch as bee knit and annexed by expreſſe wordes to the feoffement leaſe or graunt either in writing or without: as for example, If I infeoffe a man of certaine lands reſeruing to me, and to my heires ſo much rent yerely to be paid at ſuch a feaſt, and for default of paiment, that it ſhall be lawfull for mee to reenter, this is a feoffement vpon condition of paiment. And here the reentre of the feoffor

for

for the not paimēt of ỹ rent ſhal diſſolue and vt-terly defeat the feoffement, ſēblable it is of gifts in taile, leaſes, &c. But if the condition bee, that for default of payment of the rent, it ſhall bee lawfull for the feoffor to enter againe into the landes, and to holde them till he bee contented and ſatiſfied of the rent: this condition not per-formed doth not diſſolue nor vndoe the feoffe-ment, but onely giueth to the feoffour an au-thoritie to retaine the landes (as it were by way of diſtreſſe) till he hath leuied the arrerages of the rent. And yee ſhal well marke and obſerue, that conditions be ſometime made to bee perfor-med on the feoffees behalfe, and ſometime on the feoffors behalfe. On the feoffees behalfe, as when I enfeoffe you of lands or tenements vp-on condition that you ſhall do ſuch an act, as to pay vnto me or mine heires ſuch an annuel rent. Diſtres.

On the feoffours behalfe, as when I make a feoffement vnto you vpon condition that if I pay or cauſe to bee paide vnto you before ſuch a day ſuch a ſumme of money, then it ſhall be law-full for me to enter againe and retaine my lands in my former eſtate. In this caſe he that is the feoffee is called tenaunt in morgage, which is as much to ſay as ded-gage, and it ſeemeth that the cauſe why it is ſo called, is foraſmuch as it is doubtfull whether the feoffour will pay at the day limitted and preſcribed ſuch a ſumme of mo-ney for the redemption of his landes or not, for if he do not his title or intereſt in the lands thus gaged & oppignorate, is vtterly extinct & gone without all hope of renuing. Tenants in morgage.

Yee ſhall alſo note, that if the morgager

terme of life, it is reason, that it shall serue him in the remainder.

Also if there be two parceners, and the one alieneth his part to an other: the other parcener and the alienee be tenants in common.

Tenants in cõmon by title of prescripion

Furthermore, tenants in common may be by title of prescription if that one & his auncestors or they whose estate he hath in the halfe haue holden in common the same halfe with the other tenant that hath the other halfe, & with his auncestours or them whose estate he hath as vndeuided time out of mind. And ye shall marke that in some case tenaunts in common, ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action, for if there be two tenants in cõmon & they be disseised, they ought to haue against the disseisor two assises and not one assise.

Actiõs seuerall.

Assise.

For euery of them ought to haue an assise [illegible] because they were seised by seuerall titles, but otherwise it is of iointenants, for if there be iointenants & they be disseised, they shall haue in all their names but one assise, because they haue but one ioint title.

Assise.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterwards the other two be disseised of the whole, in this case they shall haue in both their names one assise of the two parts. And as to the third parte he to whom the releas was made ought to haue thereof an Assise in his owne name, because as to the third part he is tenant in common.

Diuersity.

Also as to sire actions that touche the realtie, there is a diuersity betweene parceners that are

in

in by diuers diſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, hath iſſue two daughters and die, and they enter into the lands as coheires, and eche of them haue iſſue a ſonne and die without partition made betweene them, ſo that the one halfe diſcendeth to the ſonne of thone parcener, and the other halfe to the ſoune of the other, & they enter & occupy in common, & be diſſeiſed, in this caſe they ſhal haue in their two names one aſſiſe, & not two aſſiſes. And yet the cauſe is, though they come in by diuers diſcents, yet they be coheires & parceners. Alſo if two tenants in common of certain lands in fee, giue the ſame to another man in the tayle, or let it to an other for terme of life, yeelding an annuitie or certaine rent, or a pound of Pepper, or an hauke, or an horſe, & they be ſeiſed of theſe ſeruices, and afterward all the rent is behind, & they diſtraine for it, and the tenant maketh reſcous, in this caſe as to the rent and the pound of Peper, they ſhal haue two aſſiſes, and as to the hauke & the horſe but one Aſſiſe. And the cauſe why they haue two Aſſiſes as to the rent and pound of Peper is for that they were tenants in common by ſeuerall titles, and when they made a gift in the tayle or leaſe for terme of life, ſauing and reſeruing to them the reuerſion and yelding to them certaine rent: this reſeruation is incident to their reuerſion. And becauſe their reuerſion is in common and by ſeuerall titles, euen as their poſſeſſion was before the rent and other things which may bee ſeuered, and which were to them reſerued vpon the gift or vpon the leaſe which bee incident by the Lawe to the re- Reſcous.

uerſion, therefore ſuch thinges ſo ſeuered bee of the nature of the reuerſion.

Plaint in aſſiſe.

Wherefore it behoueth that the rent and the pound of Pepper which may be ſeuered to bee then in common by ſeuerall titles. And of this they ſhal haue two Aſſiſes, and euery of them in his aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pounde of Pepper. But of the hauke and the horſe, which cannot bee ſeuered, they ſhall haue but one Aſſiſe, for it were an abſurditie and thing inconuenient to make a plaint in Aſſiſe of the halfe of an Hauke, or of the halfe of an horſe. In like manner it is of the other rents and ſeruices that tenaunts in common haue in ground by diuers titles.

Perſonall action.

And ye ſhall vnderſtand that concerning actions perſonals, tenaunts in common ought to haue them ioyntly in all their names, that is to ſay of treſpaſſe or of offences that touch their tenements in cõmon, as of breaking of their houſes, breaking of their cloſſes, & paſtures, waſting & defouling of their graſſe, cutting of their woodes & of fiſhing in their ponds & ſuch other, and they ſhall recouer iointly damages, becauſe the action is in the perſonaltie and not in the realtie.

Damage.

Tenants in common ſhall haue one actiõ of debt.

Alſo if tenaunts in common make a leaſe of their tenements to an other for terme of yeeres, yeelding vnto them yerely a certaine rent, if the rent bee behinde, they ſhall haue one action of debt againſt the leſſee and not diuers actions, becauſe the action is in the perſonaltie.

But in an auowrie for ỹ ſaid rent, they ought to be ſeuered, becauſe it is in ỹ realty, as be aſſiſes.

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Of Chattels. Chap. 17.

IT is to be knowen that as there be tenaunts in common of lands or tenements: so there be tenants in cõmon of possessions & property of chattels, as well real as personal. Of reall, as if a lease be made of certain lands to two men for terme of twentie yeares, and when they be thereof possessed, the one graunteth that that vnto him belongeth during the terme to another, he to whom the graunt is made, and the other shall hold and occupie in common.

Iointenants of a ward.

Also if two toyntenaunts haue the warde of the body & of the landes of an heire within age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then he to whom the grant is made, and ỹ other that granteth not, shal haue & hold it in common.

Of chattels personals: as if two haue a toynt estate eyther by gift or by buying of an horse, or of an oxe, or such like, and the one of them graunteth that, that to him belongeth, heere shall the grauntee, and hee that graunted not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personals in common and by diuers titles if one of them die, the other that suruiueth shall not haue his fellowes part by the suruiuour, but the executours of him that dyeth shall holde and occupie it with him that suruiueth in like forme as their testatour did, or ought in his life, forasmuch as their tytles and rightes were seuerall. Also in the case aforesaide, if two haue an estate in common for terme of yeares, and the one doeth

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Hoꝛſe, an Oxe or a Kowe, if the one take it all to
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medy by any actiō at ẏ law, but to take the child
out of ẏ others poſſeſſiō, when he ſeeth his time.

Fourme of pleading. Finally, ye ſhall vnderſtande that when a
man in pleading and declaring his cauſe, will
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But where a man wil declare or plead a leaſe or graunt made vnto him of a chattell reall or perſonall, then he ſhall ſay by force of which hee was poſſeſſed.

Of partition to bee made by iointenants and tenants in common enacted by 2. ſtatutes made, the one in Anno 31.H.8.& the other in 32.H.8.Cha.18.

ALl iointenants and tenantes in common of any eſtate of inheritance in their owne rightes or in the right of their wiues of any lands or hereditaments within this Realme of Englande, Wales, or the Marches of the ſame, ſhall and may be compelled to make partition betweene them of the ſame which they ſo hold as iointenantes or tenantes in common by a writ de particione faciẽda, to be deuiſed in the Chauncery in like manner as coparceners are compelled to doe, & the ſame writ to be purſued at the cõmõ law. And after ſuch partition made euerie of the ſaid iointenants & tenants in common, ſhall and may haue aide of the other: or of their heires, to thintent to dereigne the warrantie paramount and to recouer for the rate as is vſed betweene coparceners, after partitiõ made by the order of the common law.

Writ de Particione faciẽda

Aide praied.

Item in the xxxij. yeare of king Henrie the eight, Chap. 32. It is further enacted that all iointenants & tenantes in common which holde iointly or in common for terme of life, yeare or yeares or iointenants or tenãts in cõmon where one or ſome of them haue an eſtate for terme of

life or yeares with other that haue an estate of inheritãce or freehold in any lands or other hereditamentes shall bee compellable by writ of Partition to be pursued out of the chauncery vpõ their cases, to make seuerance and partition of all such lands and hereditaments as they holde ioyntly or in cõmon for terme of life, or lyues, yere or yeres, or where one or some of thẽ hold ioyntly or in cõmon for terme of life or yeres with other ỹ haue an estate of inheritãce of free holde. Prouided that no such peticion nor seuerance, be hurtful to any person other then such as be parties vnto the saide partition their executors or assignes.

Of Conditions. Chap. 19.

For asmuch as euerie estate is eyther pure or conditionall, it were not amisse to make some declaration of the nature and efficacie of conditions. Wherefore ye shall vnderstand that of conditions, some bee actuall conditions, and be called expresse conditions, or conditions in deed, and other some bee conditions in lawe, which be called in Latin conditiones tacitæ siue conditiones implicitæ, because they bee secretly employed by the law and not expressed.

Diuision. Conditions in deede be such as bee knit and annexed by expresse wordes to the feoffement lease or graunt either in writyng or without: as for example, If I infeoffe a man of certaine lands reseruing to me, and to my heires so much rent yerely to be paid at such a feast, and for default of paiment, that it shall be lawfull for mee to reenter, this is a feoffement vpon condition of payment. And here the reentre of the feoffor

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for the not paimēt of ỹ rent ſhal diſſolue and vt-terly defeat the feoffement, ſe liable it is of gifts in taile, leaſes, &c. But if the condition bee, that for default of payment of the rent, it ſhall bee lawfull for the feoffor to enter againe into the landes, and to holde them till he bee contented and ſatiſfied of the rent: this condition not per-formed doth not diſſolue nor vndoe the feoffe-ment, but onely giueth to the feoffour an au-thoritie to retaine the landes (as it were by way of diſtreſſe) till he hath leuied the arrerages of the rent. And yee ſhal well marke and obſerue, that conditions be ſometime made to bee perfor-med on the feoffees behalfe, and ſometime on the feoffors behalfe. On the feoffees behalfe, as when I enfeoffe you of lands or tenements vp-on condition that you ſhall do ſuch an act, as to pay vnto me or mine heires ſuch an annuel rent. Diſtres.

On the feoffours behalfe, as when I make a feoffement vnto you vpon condition that if I pay or cauſe to bee paide vnto you before ſuch a day ſuch a ſumme of money, then it ſhall be law-ful for me to enter againe and retaine my lands in my former eſtate. In this caſe he that is the feoffee is called tenaunt in morgage, which is as much to ſay as ded-gage, and it ſeemeth that the cauſe why it is ſo called, is foraſmuch as it is doubtfull whether the feoffour wil pay at the day limitted and preſcribed ſuch a ſumme of mo-ney for the redemption of his landes or not, for if he do not his title or intereſt in the landes thus gaged & oppignorate, is vtterly extinct & gone without all hope of renuing. Tenants in morgage.

Yee ſhall alſo note, that if the morgager

dyeth before the day of paiment, his heyre may redeeme the land verie well euen as well as his auncestour that morgaged the land might haue done although there be no mẽtion made of heirs in the writing.

Also if when the money is lawfully by the morgager or his heire tendred and profered, and the lessour refuseth to receiue the same the feoffour or his heire may enter, and then hath the feoffee no remedy for his money at the common lawe. Ye shall vnderstand also, that some conditions be vtterly void in the law, and of none efficacie, vertue or strength, as if a feoffement bee made of lands in fee simple vpon condition, that the feoffee shall not alien or put away the same to none other, this condition I say is voide, because the feffee is restrained of his whole power that the lawe giueth in such case vnto him, and which power and libertie, is in manner included in euerie feoffement, yet I may abridge him of part of his power, as to condition with him that he shall not alien the lands to such a person or such. But of gifts in taile otherwise it is, for if I giue landes to a man and to the heires of his body lawfully begotten vpon condicion that hee nor his heires shall alien the landes to none other person, this condition is good and effectuall in the Law, and if he or his heires contrarie to the condition do alien them, then the giuer or his heires may verie well enter and retayne the landes for euer, because this condition shal stande with the forenamed statute of Westmin. ꝑ second, which prohibiteth such alienations to be made.

Conditions voide.

Gift in taile vpon cõdition.

Hether-

Hetherunto haue I ſpoken of conditions in deed, now will I ſhewe what be conditions in law that be annexed to any eſtates.

Eſtates vpon conditions in lawe.

Know ye therfore, that if the office of a Parker, Steward, Conſtable, Bedell, or Bailiffe, or ſuch like office, be graũted to a man for terme of his lyfe, though there be no condition at all mentioned in the graunt, yet the law ſpeaketh of a condition in this caſe, which is that if the partie to whom ſuch office is giuen, ſhall not execute all points appertaining vnto his office accordingly, by himſelfe or his lawfull deputie, it ſhalbe lawful for the graunto͂r, to enter and diſcharge him of his office, and this cõditiõ, is called a condition in lawe. There be alſo three other maner of eſtates vpon condition, that is to ſay, conditions againſt the lawe, conditions repugnant, and conditions impoſſible.

First, eſtates vpon conditions againſt the law be, as if a mã make a feoffement, gift, graũt or leaſe vpon condition that if the feoffours, donours, grauntours or leſſours kill I. S. which is not ỹ kings enemy, or burne his houſe that then it ſhalbe lawfull to the feoffours, donours &c. to reenter, this condition is void, and the eſtate is good.

Conditions againſt the law.

And like lawe is if ſuch conditions bee to be performed of the part of the feoffe grauntee. &c.

But if it be that a leaſe for terme of yeares be made of land vpon cõdition that if the leſſees kill I. S. that then he ſhall haue fee ſimple although that he in this caſe performe the condition, his eſtate is nothing thereby enlarged, becauſe the condition is againſt the law.

Also

Obligation.

And ye shall vnderstand that where an obligation is endorsed with a condition which is against the Law: both the obligation and also the condition be clearely void in the law.

Conditions repugnant.

Estates vpon conditions repugnant be as if a feoffement or a gift in tayle be made vpon condition that the feoffee or donee, shal take no profite or shall do no waste, and such other like, such conditions be void, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for terme of life vpon condition that he shall not do fealtie, that is as a void condition.

Likewise it is if a man that hath nothing in the manour of Sale, graunteth a rent charge going out of the same vpon condition, that the person shall not be charged, this graunt is good & the condition is void.

Conditions impossible.

Estates vpon conditions impossible, be as if a feoffement be made vpon condition, that if the feoffe goeth not through the sea on foote to Calays in one day, then it shalbe lawfull to the feoffor to reenter, this is a frustrate and voide condition, and yet the estate is good.

Like law is of a lease made for terme of yeres &c. or an obligation with a condition impossible vt supra, the obligation or lease is good and the condition void to all purposes.

An acte how straungers shall take aduantage of conditions made. An. 32. H. 8.

Chap. 20.

IT is enacted that as well persons, which haue or shall haue any gift or graunt of the king by his letters Patentes of any landes, persones,

perſonages, titles, or other hereditaments, or any reuerſion of the ſame which did belong to any monaſtery or other eccleſiaſticall houſe diſſolued or otherwiſe come into the kings hands ſince the fourth day of Februarie in the xxviij. yeere of our ſouereigne Lord king Henry the eight, or which at any time heretofore did belonge to any other perſon, and after come into the Kings hands, as alſo all other perſons being grauntees or aſſignees to the King or to any other perſon, their heires executours, ſucceſſours, and aſſignes, ſhall haue like aduauntage againſt the fermours, and their executors, adminiſtratours and aſſignes, by entre for non payment of the rent, or for doing waſt or other forfaiture, and alſo ſhall haue the ſame aduauntage by action onely of not performing of other conditions, couenaunts or agreements contayned in the indentures of their leaſes or graunts againſt the ſaid fermors, & grauntees, their executours, adminiſtrators, & aſſignes, as the ſaid leſſours or grauntours themſelues might haue had at any time. And againe mutually and on the other ſide, the ſaid fermours and grauntees for terme of yeares, lyfe, or liues, their executours, adminiſtratours and aſſignes, ſhall haue like aduauntage againſt them for any condition couenant and agreement contained in the ſaid indenture, as they might haue had againſt their ſaid leſſours and grauntours their heires, ſucceſſours, all beneſites & aduauntage of recouerries in value by reaſon of any warranty of deed or in law by voucher or otherwiſe onely except.

Prouided that this acte ſhall not extende to charge

charge any person for breach of any couenant or condicion comprised in any such writing, but for such as shall be broken and not performed after the first day of September in the 32. yeare of this king and not before.

Liuery of seisin, and Atturnement. Chap. 21.

In all feoffements, giftes in taile, leases for terme of an others lyfe, of lands or tenemēts, there can be no alteration transmutation of possession by the ancient lawes of this Realme, vnlesse there be a certaine ceremony adhibited and solempnised in the presence and sighte of neighbours or others, which ceremony is called liuery of seisin.

The maner of liuery of seisin.

And yee shall vnderstand, that this ceremony of liuery of seisin is done when the feoffour, donour, lessour, or their deputie come with the neighbours solempnly to the lāds or tenemēts, and they put the feoffee, donee or leasee in possession of the saide landes or tenements by deliuering vnto him a clod of earth, or the ring of the dore, or some other thing in the name of seisin, and for this selfe cause this ceremonie of law is called liuery of seisin, that is to say, a tradition or giuing of seisin.

Diuersity betweene possession and seisin.

But this ceremonie is not required in leases for terme of yeres or in leases at will, forasmuch as the lessour in such lease remaineth still seased and the lessee onely hath possession without any liuery of seisin, and therefore the termes of the law be that such a man is possessed, whereas in feoffements giftes in tayle, and leases for life, he is called seased.

Where-

Wherefore if a feoffement or leafe for life be made of lands or tenements and before that the liuery of ſeaſin be made, the feoffour dieth, the heyre of the feoffour ſhall haue the lands, Per ſummum ius, that is to ſay, by the rigour of the law, notwithſtãding that the feoffes haue payd to the feoffour the price of the lãd, and although the feoffee be in poſſeſſion. But otherwiſe it is of a leaſe for terme of yeeres.

Atturnement.

A like ceremonie is vſed when rent charge, rent ſeruice, rent in groſſe, a villaine in groſſe, common in groſſe, common for beaſtes, certaine eſtouers, and ſuch other thinges as paſſe by way of graunt, be graunted, for it is no full and perfit graunt till it be conſignat and ſealed as it were with the ceremony of atturnement. This Atturnement is nothing els, but when the tenant of land of which a rent graunted is graunted, or out of which a rent is graunted, doth make ſome euident ſignification and token that he accepteth the perſon to whom the graunt is made to be in the ſame reſpect vnto him that the grauntour was. As for an example, if the tenãt of the land after hee haue heard of the graunt, commeth to the grauntee, that is to wit, to the perſon to whom the graunt was made, and ſay in this wiſe, or in like effect.

How atturnement ſhalbe made.

I agree vnto the graunt made vnto you by ſuch a man, or I am well apaid and contented of the graunte that ſuch a man hath made vnto you. But the moſt vſuall frequent forme of atturnement is, to ſay. Syr I atturne vnto you by force of the ſaid graunt, or I become your tenant, or to deliuer vnto the grauntee, a penny, or

a halfe peny by way of atturnement.

If a man maketh first one grant to one person, and after another to another person, that graunt shall stand to which the tenaunt will atturne although it be to the latter graunt.

And ye shall note, that if a man be seased of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same Manour to another, vnlesse the tenaunt of the Manour do atturne the seruices shall not passe, onely tenants at wil excepted, for it needeth not to cause them to atturne.

Diuersity. Note furthermore, there is a great difference betweene giuing a peny in name of seisin, & giuing by way of atturnemẽt, for whẽ it is giuẽ by ỹ tenant to the graũtee in the name of season, it doth not onely imply an atturnement, but also it

Assise. giueth him such a seisin, that if ỹ rent afterward were behind & not paied, he may now vpõ ỹ seisin of the penny after a lawfull distres taken, &

Writ of rescous. after rescous made, bring an Assise of nouel disseisin, where as if it were giuen onely by way of atturnemẽt he could not bring the Assise, but his writ of rescous only, if rescous were made.

Also ye shall vnderstand, that where landes be deuisable by Testament, by the custome of any auncient Borough or Cittie, if the reuersion of any lands bee by testament bequeathed to a man in fee, and the testatour, which wee call the deuisour dieth, the diuisee that is to witte, he to whom the deuise was made, hath forthwith the reuersion in him without further ceremonie of

Atturnement. Atturnement. Likewise it is if a man by testament doth bequeath a rent charge that he is seased

sed of, or of a rent seruice, there needeth none atturnement at all.

If two iointenants be of land and the Lord graunteth the seruices to another, if one of the iointenants atturneth it is enough. Not acquisite.

Finally if a lease bee made for terme of lyfe, the remainder to another in tayle, the remainder ouer to the right heire of the tenaunt for terme of lyfe, in this case if the tenaunt for terme of lyfe, will graunt his remainder in fee to another by his deed, this remainder passeth forthwith, without any Atturnement, for if any Atturnement were requisite it should be made of the tenaunt for terme of life, which in this case is the grauntour himselfe. And in vaine it is that the grauntour should bee enforced to atturne sith an atturnement is adhibited & had to none other purpose then to haue the consent & agreement of the particuler tenant, to the intent that it may appeare, that he hath notice & knowledge of this graunt, but here where the particuler tenant himselfe is the grauntour, an atturnement were superfluous, and more then needed.

Note furthermore that where there is Lord and tenaunt, and the tenaunt leaseth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husbād, and after the Lord graunteth the seruices &c. to the husband, in this case during the couerture the seruices be put in suspence. But if the wife die leauing the husband, the husband and his heyres shall haue the rent of them in the remainder, &c. And in this case there needeth no atturnement by word because the husband ꝑ ought to atturne accepteth Suspence.

eeth the graunt of the seruices, the which acceptance is an atturnement in the law.

Of Seruice. Chap. 22.

HEtherunto haue I briefly touched & ouerrunne the sundry kinds and formes of estates. Now forasmuch as there is no tenure but hath vnto it some seruice knit and annexed, it were very necessary to declare how many kinds of seruices there be, & what seruice is due to euery tenure. For the knowledge hereof ye shal vnderstand that the principal & most cõmon kind of seruice that the tenãt oweth to his Lord, is called knights seruice.

Knights Seruice. Chap. 23.

KNights seruice includeth homage, fealty, & for the most parte escuage, & whosoeuer holdeth his landes by knight seruice is bound by the lawe of this realme to do vnto his Lord homage & fealty & to pay for the most part escuage, whẽ it shalbe assessed by authority of parliament, as hereafter more plainly shalbe declared.

Homage.

Homage is the most hũble & reuerent seruice that a man of free estate & condition can do, for when the tenãt shall do homage to his Lord, the Lord shall sitte & the tenant then kneele downe before him vpõ both knees, holding his hands betweene his lords hands & say in this wise. I become your man frõ this day forward, of life & of mẽber, & earthly honor, & to you shalbe faithfull & true, & faith to you shal beare for the lands that I clayme to holde of you, sauing the faith that I beare vnto our soueraigne Lord ỹ king, & then the Lord so sitting shall kisse him. But if an ecclesiasticall person, which by his order

How the tenant shall do homage.

and

and profeſſion hath addicted himſelfe to the ſeruice of God in eſpeciall, ſhall do homage to his Lord, he ſhall ſay, I do to you homage and ſhal be to you faithfull and true, & faith to you ſhall beare for the tenements that I hold of you, ſauing the faith which I owe to our ſoueraigne Lord the King. What a religious perſon ſhal ſay when hee doth homage.

Alſo when a womã not maried, doth homage to her Lord, ſhee ſhall not ſay, I become your womã, for it is not cõuentẽt that a womã ſhould be the woman of any other then of her huſband that ſhe ſhal marie, but ſhal ſay euẽ as the eccleſiaſtical ꝑſon ſaith. I do vnto you homage &c. What a womã ſhall ſay.

And if perchaunce a man holdeth ſundrie lands and tenements of ſundrie Lordes, and euerie of them by knights ſeruice, then in the end of his homage making, he ſhall ſay, ſauing the faith that I owe to our ſoueraigne Lord the king, and to mine other Lords.

And none is bound to do homage to the Lord vnles it be ſuch tenaunt as hath in the tenancie an eſtate of fee ſimple, or fee taile, either in his owne right, or in the right of an other.

For if a woman haue lands or tenements in fee ſimple, or fee tayle, which ſhe holdeth of her Lord by knights ſeruice, and taketh an huſbãd and hath iſſue, in this caſe the huſband in the life of his wife, ſhall doe the homage, becauſe he hath a title to haue the landes by the curteſie of England, if hee ouerliueth her, and alſo hee holdeth them now in his wiues right, yet before iſſue had betweene them the homage ſhall bee made in both their names. But if the woman dieth before any homage made in her life, and What tenãt ſhall do homage,

the huſband keepeth ſtill the lands as tenant by curteſie, nowe hee ſhall not doe homage to his Lorde, becauſe hee hath now an eſtate but for terme of life.

Fealtie. Fealtie, is as much to ſay, as fidelitie, or faithfulnes, in doing whereof the tenaunt ſhall hold his hande vpon a Booke, and ſay thus. Heare you this my Lord, I to you ſhalbe faithfull and true, and faith to you ſhall beare for the lands and tenements, which I clayme to hold of you, and duely ſhall doe to you the cuſtomes and ſeruices which I owe to doe to you at the termes aſſigned, as mee helpe God. And then hee ſhall kiſſe the booke, but hee ſhal not kneele as he that doth homage, nor do ſuch hũble or reuerent ſeruice as is before declared in homage.

How a tenaunt ſhal do fealty.

And ye ſhall obſerue that homage cannot be done but to the lord himſelfe, whereas the ſteward of the Lordes court or the Bayliffe may take fealtie for the Lord. Alſo tenant for terme of life ſhall do fealtie, but homage, as I ſaid he can not doe.

Diuerſitie betwéen homage and fealtie.

Now as concerning eſcuage, that is to ſay, the ſeruice of the ſhield, ye ſhall vnderſtand, that hee that holdeth his landes by eſcuage, when the King maketh a voiage royall into Scotland for the ſubduing of the Scots, is bound to bee with the Kings maieſtie by the ſpace of xx. dayes well and conueniently arayed and appointed for the warre. And he that holdeth his lande but by the moytie of the fee of knighres ſeruice, is bounde by the force of his tenure to bee with the king by the ſpace of xx. dayes, and

ſo

ſo proportionably according to the rate & quantitie of his tenure.

But nowe to our inſtitute and purpoſe, after this voyage royall into Scotland, in which the king goeth in perſon, and after his returne into Englande againe, a Parliament is wont to be ſummoned, in which ſhalbe preſcribed and aſſeſſed what euery perſon that holde his lande by homage, and went not with the kinge, neyther by himſelfe nor by his deputie, ſhall pay to his Lorde in ſatisfaction of his not ſeruing, and according to the taxation hereof euery tenant ſhal pay to his immediate Lord, whether it be the king or other, after the rate and portion of his tenure, if he holdeth by an hole fee, he ſhal pay the whole eſcuage, if by a moitie the halfe, if by the fourth parte of a fee the fourth part &c. And this money thus aſſeſſed is called ſcutage or eſcuage, for which the Lorde to whom it is due, may very well for the non payment thereof diſtraine. But here it is to be noted, that ſome tenaunts by cuſtome vſed time out of minde, are bound to pay but the moytie, or the third part of that, which ſhalbe aſſeſſed and limited by acte of Parliament. Parliament. Diſtres of eſcuage.

Yea, and the cuſtome is in ſome place, that to what ſumme of money ſoeuer eſcuage is aſſeſſed, the tenauntes ſhall pay neuer but ſuch a certaine ſumme of money, and this kinde of eſcuage is called eſcuage certaine, that is to ſay, where eſcuage is aſſeſſed by the Parliament, to a more or leſſe ſumme the tenaunt to pay to the Lord b. s. and no more nor no leſſe &c. ſuch a tenure is called Socage tenure, & not knights Eſcuage certaine.

ſeruice, where as the other is called eſcuage vncertaine.

Eſcuage vncertaine.

Finally ye ſhall vnderſtand, that eſcuage vncertaine is alwaies adiudged to be knights ſeruice, and draweth vnto it, warde, mariage, and reliefe, but eſcuage certaine is not knightes ſeruice, but is of the tenure of Socage, as ſhall be hereafter more amply ſhewed.

Of ward, Mariage, and Reliefe.

Chap. 24.

EVerie knightes ſeruice draweth vnto it warde, mariage and reliefe. Wherefore it is nowe right expedient ſomewhat to entreat of them.

Warde.

Ye ſhall therefore bee admoniſhed that when the tenant which holdeth his lands by knightes ſeruice dieth, his heire male being at that time within the age of xxi. yeares, the Lord ſhal haue the ward, that is to ſay, the cuſtodie or keeping of the landes ſo holden of him to his owne vſe and profite, till the heire commeth to the full age of xxi. yeares. For the law here preſumeth that till he come to his age, he is not able to do ſuch ſeruice, as is of this tenure required.

Mariage.

Furthermore, if ſuch heires be vnmaried at the time of the death of the tenant, then the lord ſhall haue alſo the ward, and the beſtowing of the mariage of him.

The full age of a woman.

But if a tenaunt by knights ſeruice dyeth, his heire female being of the age of xiiii. yeares or aboue, then the Lorde ſhall haue the warde neyther of the lande, ne yet of the bodie of ſuch an heyre, and the reaſon hereof is, becauſe a woman of that age, may haue a huſband able to doe

doe knights ſeruice, that is to ſay, to watt vpon the kinges mateſties perſon, when he goeth into Scotland with his armie royall.

But if ſuch an heire female bee within age of xiiij. yeares, and not maried at the time of the death of her auncestour, then the Lord ſhal haue the warde of the land holden of him, till ſuch heire female commeth to the age of xvi. yeares, by force of an act of Parliament in the ſtatute of Weſtminſt. 1. cap. 12.

Note, that there is a great diuerſitie in the law, betweene the ages of females & of males, for the female hath theſe many ages appointed by the law. Firſt at vij. yeares of age the lord her father may diſtraine his tenants for ayde to mary her. Secõdly at ix. yers of age, ſhe is dowable. Thirdly at xij. yeres ſhe is able to aſſent to matrimony. Fourthly at xiiij. yeares ſhe is able to haue her land, and ſhall be out of ward, if ſhe bee of this age at the death of her auncestour. Fiftly at xvi. yeares ſhee ſhall bee out of ward though at the death of her auncestour, ſhe was within the age of xiiij. yeares. Sixtly, at xxj. yeares ſhee is able to make alienations of her landes or tenementes. ¶ Whereas the man hath but two ages, the one at xiiij. yeares to haue his landes holden in Socage, and to aſſent to matrimony, the other at xxi. to make alienations.

Diuerſitie of age.

Age of a woman.

The age of a man.

Yee ſhall vnderſtande that by the Statute of Merton, 6. Chapt. it is enacted, that if in caſe the Lords do mary their wards to villains or others (whereby is diſparagement,) if ſuch heires ſo maried bee within the age of xiij.

yeares, or such age that the said warde cannot consent to the marpage, then if the frieds of this heire complaine, and feele themselues grieued with this vnmeete marriage, the next of kinne to the heire, vnto whom the heritage cannot discend, may enter into the landes, and put out the Lord, which is gardeine in chiualrie, and if the next kinsman will not thus doe, another kinsman of the enfant may do it: And shall take the issues and profites to the behoofe and vse of the heire, and shall yeeld accompt thereof vnto him when he commeth to his full age.

Accompt giuing.

Also there bee diuers other disparagementes which bee not expressed in the said statute, as if the heire being within age of consent, and in ward, be maried to a decrepit person, or cripill as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continual infirmitie. All these and such like be disparagements.

Diuers disparagements.

But here also ye shal vnderstand, that it shall be said no disparagement, vnlesse the heyre be so maried when he is within age of discretion, that is to say, within the age of xiiij. yeares. For if he be of that age or aboue, & assenteth to such mariage, it is no disparagemt, neither shal ꝑ lord for such mariage lose his ward, because it shalbe reputed & assigned to the folly of the heire being of age of discretion, to consent to such mariage.

Now if the Lord, then being gardeine offer to the heyre being his warde, a conuenient mariage without disparagemt, and the heire refuseth it, as he may at his choise and election very well doe, then the Lorde shall haue the value of the

Value of mariage.

the mariage of ſuch heire, when hee commeth to his full age. But yet if he marie himſelfe being ſo in ward againſt the will of his gardeyn, then he ſhall pay the double value by force of the ſtatute of Merton before remembred.

Double value of mariage.

And yee ſhall note, that if landes holden by knights ſeruice do diſcend to an infant or child within age from his mother, or from any of his auncestours his father being yet aliue, in this caſe the Lord ſhall not haue the mariage of his heire, for during the life of his father, the ſonne ſhalbe ward to no man.

One ſhall noe be ward liuing his father.

Finally, it is to be knowen ỹ he which is gardein in chiualry in right, may before he hath ſeaſed ỹ ward, grãt the ſame eyther by deed or with out deed to an other mã, & then he to whom ſuch a graunt is made, is called gardein in fait.

Now as touching reliefe, ye ſhall know that if a man holdeth his lande by knightes ſeruice & dieth, his heire being of full age (the full age of the male is xxi. yeares, of the female xvij.) then the Lord of whom the land is holden ſhall haue of the heire reliefe.

Note ye that all Earles, barons, or other the kinges tenauntes (holding of him in chiefe by knights ſeruice) which die, their heire being of ful age at the time of their deathes, that is to ſay xxi. yeares of age they ought to pay the old reliefe for their inheritãce, that is the heire or heires of an Earle, for an whole Earledome 100. li. The heire or heires of a Barõ for an whole Barony one hundreth markes. The heire or heires of a knight one hundreth ſhillinges, and hee that hath leſſe ſhall giue leſſe according to the old

cuſtome of fees, like lawe is obſerued of all o-thers that hold of any other Lords immediately vt ſupra.

Alſo a man may hold lands of a Lord by two knightes fees, and then the heire being of full age at the death of his auncestour, ſhall pay to his lord for relife x. pounds.

Seruice of Caſtell garde. Chap. 25.

YE ſhall vnderſtande that a man may holde by knights ſeruice, and yet not hold by eſcuage, nor ſhal pay any eſcuage, for he may hold by caſtell garde, that is to ſay, by ſeruice to keepe a tower of his lordes caſtell, or ſome other place vpon a reaſonable warning, whē his lord heareth that enemies will come, or bee already come into Englond.

Ground in the Lawe.

This ſeruice is alſo knights ſeruice, & draweth to it ward, Mariage and Realeſe, as in all caſes the common knights ſeruice doth.

Of graund Sergeantie. Chap. 26.

THere is alſo another kinde of knightes ſeruice, which is called graund ſergeanty, that is, where a man holdeth his lands or tenements of the king by ſuch ſeruice as he oweth in proper perſon to doe, as to beare the banner of our Soueraigne Lord the King, or his ſpeare, or to cōduct his hoaſt, or to be his Marſhal, or to be the ſewer, caruer, or butler, at the feaſt of the Coronation, or to be one of the Chāberlaines of the receipt of his Eſchequer, or to do like ſeruice to the Kinge in proper perſon, ſuch

such maner of seruice I say is called graūd sergeanty, that is to say, a great or high seruice and the cause why it is so called, is because it is the most honorable and most worthy seruice that is, for he that holdeth by escuage, is not appointed by his tenure, to doe any other more spectall seruice then an other is bound that holdeth by escuage, but he that holdeth by grand sergeanty, is bound to do some spectall seruice to the king. The most high seruice.

Also if he that holdeth of the king by graund sergeanty dieth, his heire being of full age, then the heire shall pay to the king for reliefe not only C.s. as he that holdeth by escuage shall doe, but moreouer the cleere yeerely value of those lands and tenements which he so holdeth of the king by graund sergeanty. Reliefe of the tenant by grād sergeanty.

Furthermore ye shal obserue, that in the marches of Scotland some men hold of the king by cornage, that is to say, blowing of a horne, to the intent to warne the men of the Countrey when they here that the Scots or other their enemies be comming, or bee already entred into England, which seruice is also a kind of graund sergeantie. Tenure by cornage.

Graund sergeanty therfore is as much to say in Latin, as Magnum seruicium, that is to say a great or high seruice, like as pety sergeanty, is called paruum seruicium, that is to say, a litle or small seruice. Diffinition of sergeanty.

But to reuert againe to the matter, yee shall note that if any tenant holdeth of any other lord then of the king by such seruice of cornage, then it is no graund sergeanty, but yet neuertheles, it is knights seruice, and draweth to it ward, ma-

riage

riage and relieke, for this is a rule infallable that none can holde by graund ſergeantie but of the kings maieſtie onely.

Rule in the law.

Finally ye ſhall vnderſtād that al they which hold of the king by this ſeruice called grand ſergeanty do hold of the king by knights ſeruice, and by vertue of this tenure the king ſhall haue of them warde, mariage, and relieke, but eſcuage yet he ſhal not haue of them, vnleſſe they hold by eſcuage of him by expreſſe ſpeciall words.

Petite ſergeantie. Chap. 27.

TEnaunt by petite ſergeantie, is hee that holdeth his land immediately of our ſouereigne Lord the king by this manner of ſeruice to pay to the king yeerely eyther a Bow, a Speare, a Dagger, a payre of Gauntlets, a payre of Spurres of Gold, a Shaft, or ſuch other ſmall things appertayning to the warre, and this ſeruice is in effect but ſocage, becauſe that ſuch a tenaunt is not bounde by his tenure to go ne do any thing in his own proper perſon, touching the warre, but onely to render and pay yerely certaine things to the king as a man ought to pay a rent. Wherefore this ſeruice of petite ſergeantie is no knights ſeruice, but yet ye ſhall note, that a man cannot hold neyther, by petite ſergeantie, neyther by graund ſergeantie, but of the king onely.

Petite ſergeantie is ſocage in effect.

Homage auncеſtrell. Chap. 28.

TEnant by homage auncеſtreli, is he which holdeth his land of his Lord by homage, and both he and his anceſtors whoſe heire he

he is, haue holden the ſame lande of the ſaide Lord, and of his aunceſtors time out of mind by homage, and haue done vnto them homage, and this is called homage aunceſtrell, by reaſon of the long continuance: which hath beene by title of preſcription, as well concerning the tenancie in the bloud of the tenãt, as cõcerning the lordſhip in the Lord. And this ſeruice of homage aunceſtrell, draweth vnto it warrantie (that is to ſay, if the Lord which is now in life, hath once receiued the homage of his tenaunt, he ought to warrant the ſame tenaunt what time ſo euer he ſhall be impleaded or ſued, for ſuch lands ſo holden of him by homage aunceſtrell,

Warrantie because of homage aunceſtrell.

Moreouer ſuch ſeruice of homage aunceſtrell draweth vnto it acquital, that is to ſay the Lord ought to acquite the tenãt againſt other Lords that can demaund any manner of ſeruice of the tenauncie.

Wherefore if in this caſe the tenaunt which holdeth by homage aunceſtrell, be impleaded of his lands, and voucheth, or calleth his Lord to warrantie, who commeth in by proceſſe, and demaundeth of the tenaunt what hee hath to binde him to the warrantie, and the tenaunt sheweth how he and his anceſtors, whoſe heire he is, haue holden his lands of him and of his aunceſtours time out of minde, ſurely the Lord if he can not denie this, and if he hath receiued the homage of ſuch a tenaunt, is bound by the lawe to warrant him his land, ſo that if the tenaunt loſe his landes in defaulte of the Lorde thus vouched, that is to ſay, called to warrantie, hee ſhall recouer againſt him as much in

value

value of those lands and tenementes which the Lord had at the time of calling to warranty or at any time after. But if the lord neuer receiued the homage of his tenant, then he may very well when he is thus vouched disclaime in the Lordship or seignory, and so put out the tenant of his warranty. Wherefore ye shall note that in euery case where the Lord disclaimeth in his seignorie in court of Record, his seignorie or lordship is extinct, and the tenaunt shall holde from thencefoorth of the next Lorde to him that thus disclaimeth.

Thus ye perceiue that homage auncestrell is not, but whereas is a long continuance, as well in the bloud of the tenaunt in respect of his tenancy, as in the bloud of the Lord in respect of his seignorie. Wherefore if the tenant doth once alien his lãds to another, although he purchase the same againe, yet he shall not hold any longer by homage auncestrel because of his discontinuance, but shall hold it now by the vulgar and accustomed homage.

Of Liueries. Chap. 29.

Tenant in chiefe of the king.

When one dieth which held of the king by knights seruice in Capite, that is to say in chief, his heires being within age, the king (as before is declared) shal haue the wardship and custody, aswell of the lands as of the body, that is to wit the mariage, if he bee vnmarried. But if the heire be of full age at the time of the death of such auncestour, yet shall the king by his prerogatiue royall haue primer seisin of all the lands, tenements, and other hereditaments,

Primer seisin.

ditaments, whereof ſuch his tenant was ſeiſed in his demeane as of fee. And if ſuch an heire will enter into his lands when he commeth to his full age before he ſue his liuery and receiue ſeiſin by the king, no freehold ſhall accrew nor grow vnto him, but he ſhalbe deemed an intruder into ỹ kings poſſeſſion, yea, & if he die ſo ſeiſed in the meane time, his wife ſhall haue no dowrie of ſuch lands, wherefore it behoueth in any wiſe, that ſuch heire aſwell male as female, comming to full age before he or ſhee enter into their land, to ſue liuery. The maner and forme whereof according to the act of parliament lately promulgated and ſet forth, I intende briefly to recite.

Intruder vpon the kings poſſeſſion.

How heires ought to ſue their liueries, enacted 33. H. 8. cap. 21. Chap. 30.

NO perſon or perſons hauing lands or tenements aboue the yeerely value of v. li. ſhall haue any liuery before inquiſition or office found before the Eſcheator or other commiſſioner, by vertue of the kings writ of Diem clauſit extremum, or Commiſſion directed out of the Chauncery or other Courts, hauing authoritie to make ſuch a writte or Commiſſion, which ſhal not paſſe out of the ſame but by warrant, or bill aſſigned, & ſubſcribed by the Maiſter of Wards or Liueries, the Surueior, Atturney, and recoueror of the ſaid court, or three, two, or one of them to be directed and deliuered to the Chauncelor of England, or to any other Chauncelor, or officer hauing power to awarde ſuch

Writ of Diem clauſit extremum.

ſuch writs, and for the writing and ſealing of the ſame ſhall bee paid of the accuſtomed fees. But if the lands exceed not the ſaid yeerely value of v.li. then they ſhall pay for the ſeales of euery ſuch writ or commiſſion viij. pence, and for the writting vj.ō. and not aboue.

And the inquiſitions and offices hereupon found, ſhall be returned by the ſaid eſchetours, or Commiſſioners into the ſame Courte from whence the writ or commiſſion was awarded, which done, the clarkes of the petite bagge ſhall receiue the ſame offices, and make a tranſcript thereof to the Maſter of the wardes, and liueries. And then the ſaid Maſter and the ſurueyour, attournie and generall receiuour, or three of them, whereof the Maſter or ſurueyour to be one, ſhall couenant and indent with ſuch perſons for their liuery of the Caſtels, Manours, Lordſhips, landes, tenements, and hereditaments, comprized or not comprized in ſuch offices, and ſhall make and ſet a rate and price of the ſame, and appoint the dayes of payment thereof by obligation to be taken for the ſame to the king.

And euery bill, for any ſpeciall or generall liuerie aſſigned, by the hands of the ſaid maſter, ſurueyour, atturney, receiuour, or three of them, whereof the Maſter, or ſurueyour to be one, ſhalbe warrant ſufficient to the Lord Chaunceler, or other officer, hauing power to paſſe liueries vnder any of the kings ſeales accordingly. In which caſe the clarkes of the petie bagge or other clarkes, by whom the liueries be written, ſhall receyue as well for themſelues as for other

other ſuch fees as hath beene accuſtomed.

Item euery perſon may ſue at his pleaſure, a generall liuery for any manours, landes, tenements, rents, reuerſions, remainders, or other hereditaments, whereof the cleere yeerely value ſhall not exceed xx.li. Prouided that an office be thereof found, and a warrant firſt obtained of the ſaid maſter and others as is aforeſaid. Generall Liuery.

And where ſuch generall liuery is ſued, if the landes exceede the yeerely value of v. li. they ſhall pay for the Seale xx.s. iiij.d. and all other fees accuſtomed as afterwarde ſhalbe declared. But if they exceed not the yeerely value of v.li. they ſhall pay but theſe fees following, that is to ſay, for the ſeale of the liuerie xij.d. To the Clarkes of the petie bagge for the writing, and the inrolling xx.d. For the reſpect of ỹ homage in the Hanapar, viij.d. To the Lorde greate Chamberlaine xx. d. To the Maſter of the Rolles xx. d. And the Clarke of the Liueries for the warrant and inrolling of the Liuerie xx.d.

Item no perſon or perſons ſhall pay in theſe chequer or any other courtes for the reſpect of homage for any lands or hereditaments not exceeding the yeerely value of v.li. aboue viij.d. And for the entring thereof and warrant of attourney aboue iiij.d. Reſpect of homage.

And the value of ſuch landes and hereditaments not exceeding the yeerely value of xx.li. ſhall be taken as it is limitted in the offices founden thereof, except by the examinations and certificate of the ſaid Maſter, ſurueyour, attourney, and receyuour, or three of them, it ſhall

otherwiſe

otherwise appeare and be declared in any of the kings Courts.

Paine of forfait.

Also no Escheatour shall sit only by vertue of his office, for inquiry of the tenure title or value of any lands or other hereditaments holden of the king, being of the yeerely value of v.li. or aboue without the Kings writ to him directed, vpon paine to forfait v.li. for euery time he shall so do. Neither shall he take for the finding of any office of lands not exceeding the yerely value of v.li. aboue xv.s. that is to say, vj.s. viij.d. for his owne fee, and xij.s. viij.d. for the writing of the office. And for the charges of the Jury iij.s. And for the officers that shall receiue the offices in any Court of record ij.s. vpon paine that the Escheator doing otherwise, shall for euery time forfait v.li. And vpon like paine the officers of euery Court of record where such inquisitions shalbe retourned, being offered vnto thē, within one moneth next after the finding thereof, shall receiue them. The one moitie of all which forfaitures to the king, and the other to the partie that will sue for the same &c.

Fees of office.

And they which hereafter shall be in case to sue liuerie, whose landes and tenements exceede not the yerely value of v.li. may lawfully sue forth that generall liuerie by warrant from the said Courts as is aforesaid, although none other inquisition be thereof had nor certified, paying neuertheles the fees aboue remembred.

Finally, euery person shall sue forth his patent for his liuery, within three monethes next after the assignement of his bill, or els his bill

assigned

assigned to be void and of none effect.

Hereafter ensueth the fees accustomed of the generall liueries.

First to the clarkes of the pety bagge, for the respect of homage & fealtie & writing and enrolling xiij.s.iij.d. To the Lord great Chamberlaine xl.s. To the master of the Rolles iij. li. To the clarks of the liuerties for writing of the Indentures & Obligations, xx.s. beside counsel.

The fees of the spectall liuerie accustomed to be paid be these following, that is to say, for the Signet iij. li.x.s. For the priuie seale xxx. s. for the great seale xliij.s. viij.d. To the clarks of the petie bagge xl. s. To the master of the liuerties clarkes xl. s. for inrolement of the knowledge of the Indenture xij. s. To the Lord great Chamberlaine of England xl.s. for the writ of the alowance for the same liuerie x.s. vi.d. And note ye that sometime in especial cases the fees be more, and sometime lesse, as the case and matter doth require.

Hetherto haue we briefly touched all kindes of knightes seruice, and thinges incident to the same. Now will we with like briefenes declare the other kinds of seruices which commonly be comprised vnder the generall name of socage. For all lands or tenements, eyther they be holden by knightes seruice, or else by socage tenure, or at least by the nature of socage tenure, which in effect is all one.

Wherefore first wee shall define what socage is in the proper signification, which done wee shall perufe the other kindes of seruice which be of the nature of socage tenure.

What ſocage tenure is.

SOcage is properly where the tenaunt is bound to come with his yoke, that is, with his plow to eare and ſowe a parcell of the demeane landes of his Lorde, which ſeruice in auncient time was verie common, but now by the mutuall conſent, both of the Lord and the tenãt, it is conuerted for the moſt part into a yearely rent. Howbeit, the name of ſocage abideth ſtill. Wherefore now, all that is not knights ſeruice, is called by the name of ſocage.

So that if a man holdeth by fealty onely, or by fealtie and homage for all manner of ſeruice, it is but ſocage tenure, for homage alone maketh not knightes ſeruice, alſo if a man holdeth by eſcuage certaine as I haue ſaid heretofore, he holdeth in effect but by ſocage.

Garden in ſocage.

Now where as a man holdeth his landes by ſocage and dieth, his heire being within the age of xiiij. yeares, the Lord ſhal not haue the ward but the next of kinne to the heire, to whom the heritage cannot diſcend, ſhall haue the rule and wardſhippe as well of the land, as of the heire, till the heire come to the age of xiiij. yeares, and ſuch tutor or gardeine is called gardaine in ſocage, and ſhall render accountes to the heire, of the iſſues and profits that he hath receiued of the landes during ſuch time, deducting his reaſonable coſtes and expences, ſo that hee ſhall not haue the wardſhippe to his owne vſe and profit, as the Lord which is gardaine in chiualry hath. And in caſe the gardayne in ſocage dieth before hee hath made his account, the heire

heire is without remedy, because no writ of account, lieth against the executors but for the king onely.

Finally, yee shall understand that when tenaunt in socage dyeth, the Lord of whom the land is held shall haue relefe, that is to say, the value of the rent that is yearely due vnto him of the tenauncy, beside the yearely rent, so that in effect after the death of his tenaunt, he shal haue of the heire two rentes, saue that for the relefe he may distraine forthwith, but for the accustomed rent hee cannot distraine till the vsuall day of payment be come. Rent. Distresse.

Franke almoigne. Chap. 32.

TEnaunt in franke almoigne, that is to say, in free almes, is where a Bishoppe, Deane, or any other ecclesiasticall person holdeth of his Lord in pure and perpetuall almes, and such tenure began first in olde time after this manner. When a man was seased in auncient time of certaine landes or tenementes in his demesne as of fee, and of the same tenementes enfeoffed an Abbot and his couent, or a Prior and his couent, or any other person ecclesiasticall, as a Deane of a Colledge, Master of an Hospitall, or such like, to haue and to holde the same landes to them and to their successours for euer in pure and perpetuall almes, or in franke almes, in these two cases the tenementes should be holden in franke almoigne. The first foundation of franke almoigne.

By force of which tenure they that holde in franke almoigne after this sort bee bounde of

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By force of which tenure they that holde in franke almoigne after this sort bee bounde of

right before God, to make orisons and prayer, & to do other diuine seruices for the soules of their grauntors & feoffors, and for the soules of their heires which bee dead and for the prosperous estate of them & their heirs, whilest they be aliue. And because of right they bee bound to this diuine seruice, they be discharged by the law to do any other prophane or corporall seruice, as fealtie or such other like.

Tenant in frank almoign shall do no fealtie.

But neuertheless if such as holde their tenemẽts in franke almoigne, do omit & leaue vndone these diuine seruices whereunto they be bounde before God, the Lord cannot distraine them, ne yet compel thẽ by any other means by the course of the common lawe, but the onely remedie is to complaine of thẽ to their ordinarie, who of right ought to compell such ecclesiasticall persons to doe the diuine seruice due as aforesaid.

Tenant by diuine seruice.

But here yee shall note that if a Parson of a Church or any other ecclesiasticall person did before the statutes of dissolutiõ of Abbeyes, monasteries &c. hold of the Lord by certain diuine seruice to be done, as to sing masse euery fryday in the weeke, or Placebo & dirige, or to finde a priest to sing masse, or to distribute in almes C. pence to a hundreth men at such a day, in al these cases if such diuine seruice be vndone, the Lord may very wel distrain, because the seruice is put here in certaine.

Distresse for diuine seruice.

Now as I saide before that if in olde time a man did enfeoffe such ecclesiasticall person after such sort he should hold his landes in franke almoigne. But at this day it is otherwise for by the reason of the statute called, Quia emptores terrarum,

terrarum, Westmin. 3. cap. 1. No man can alien ne graunt lands or tenements in fee simple, to hold of himselfe, so that now if a man being seased of lands in fee simple graunteth the same by licence to an ecclesiasticall person in franke almoigne, these words franke almoigne be voide, and the ecclesiasticall person shall hold them immediatly of ỹ Lord of the feoffor by the same services ỹ the feoffor held, so that no man can holde in frank almoigne but by force of a grant made before the said statute, onely ỹ kings maiesty excepted, for he is out of the compasse of ỹ statute.

Finally ye shall note that whereas a man holdeth in franke almoigne, his Lord is bound by the law to acquite him of all manner of seruice that any other Lord can haue or demaunde out of the said landes, so that if hee doth not acquite him, but suffer him to be distrained, then he shall haue against his Lord a certaine writ, called a writ of meine, and shall recouer against him his damages, and costes of his suit. Writ of meine

Of Burgage. Cha. 33.

A Tenure in burgage, is where an auncient borough is, of which the king is Lord, & they which haue tenements within the same borough holde the same of the king paying a certaine yearely rent, which tenure in effect is but socage tenure. Likewise it is, where as any other Lord spirituall or temporall is Lord of such borough. Socage tenure,

Here yee shall note that for the most part such auncient boroughes and townes haue diuers customes and vsages which other townes Custome

haue not. For some boroughes haue a custome that the yongest sonne shall inherite before the eldest, which custome is called cõmõly borough English.

Dower by custome.

Also in some borough by the custome, the woman shall haue for her dowrie all the lands and tenementes whereof her husband was seised at any time during the matrimony and couerture.

Deuise by custome of borough.

Moreouer in some boroughes a man may bequeath or deuise his lands or tenementes by testament at the time of his death, and by force of such deuise or legacie, he to whom the bequest is made after the death of the testator which made such testament, may by force of this auncient custome enter into the lands so to him bequeathed or deuised, without any liuerie of seasone to him made, or further ceremony of law.

Howbeit, howe and in what manner a man may at this day deuise his lands by his last wil and testament by force of a certaine new statute, it shall be hereafter declared.

Diuers other customes in England there be contrary to the course of the common law, which if they bee any thing probable, and may stand with reason are good and effectual notwithstanding they be against the common law.

And note that no custome is alowable, but such custome as hath beene vsed by title, of prescription or time out of mind.

Of villenage, or bond seruice. Chap. 34.

A Tenaunt in villenage is properly when a villaine, that is to say, a bondman holdeth of his Lorde, whose bondman he

he is, certaine lands or tenements, according to the custome of the mannour, or otherwise, at the will of his Lord, and to doe his Lord villaine seruice, as for to beare and to cary the donge of his Lords out of the Citie, or out of his Lords Manor, and to lay it vpon the demesne landes of the Lord, or to doe such like seruice and villaines seruice. Howbeit, freemen in some places holde their tenements, and landes of their Lords by custome, by such sort of seruice, and their tenure is called tenure in villenage, and yet they themselues be no villaines ne of seruile condition, but free men. For the lande holden in villenage maketh not the tenaunt a villaine, but contrariwise a villaine may make free lande to be villaine land vnto his Lord. As if a villaine purchaseth land in fee simple or fee tayle, the Lord of the villaine may enter into the land so purchased by his bondman, and put him and his heires out for euer, and this done, the Lord if he will may lease the same land to his villaine to hold of him in villenage.

And heere yee shall vnderstande, that seruitude or villenage, is the ordinaunce not of the law of nature, but of that lawe, which is called Ius gentium: by which a man is made subiect contrarie to nature, vnto an other mans dominion. For hee that is a villaine or bondman eyther he is so by tytle of prescription, that is to say, hee and his auncestours haue beene villaines time out of minde, or els hee is a villaine by his owne confession in some court of record, so that all villaines eyther they be borne villaines, or els they bee made so. They be

borne villaines, when their father being a bond man himselfe begetteth them in lawfull wedlocke, either of a free woman or of a bondwoman, for so that ỹ father be bond the issue of him lawfully begotten must needes be bound by the lawes of England, having no regard to the cõdition of the mother, whereas in the ciuill law of the Romanes it is cleane contrary. For there, partus sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the child bond, and not the bondage of the father. How be it, the bastard sonne of a bond man shall not bee bond, & the reason is because a bastard is Nullius filius, in the lawe, that is to say no mans sonne.

Bastard.

They bee made bondmen or villaines two wayes, eyther by their owne proper act, as when a free person being of full age, will come into a court of record, and there confesse himselfe bond to an other man.

Or else by the lawes of armes called, Ius gentium, as when a man is taken prisoner in warre & is compelled to serue & become the thrall and bondmã of him that took him, ỹ law calleth such a person a villain, that is to say a slaue & thrall.

And ye shall note, that villaines be properly called in Latin serui, because that when they bee taken in warre, the captains be wont not to kill them but to sell them, and so to saue their liues, so that they be called serui a seruando, that is to say of seruing. They be called Mancipia a manu capiendo, because that they be taken by hand and power of their enemies.

Definition of villaines.

Now as I saide by the lawe of nature,

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we are all borne free, but after that by the law of Gentilitie, ſeruitude or bondage did preſſe & inuade the world, then enſued the benefite of Manumiſſion, Manumiſſion is, quaſi de manu emiſſio, that is to ſay a giuing out of the hād or power. For ſo long as a man is in bondage & ſeruitude, he is ſubiect to the hand and power of an other, and whē he is manumiſſed he is made free, and deliuered from the ſaid power, ſo that a Manumiſſion is to ſay, a writing teſtifying that the Lord hath enfranchiſed his villaine, and all his offpring and ſequell. Manumiſſion.

Alſo if the Lord maketh to his bondman an obligation of a certein ſum of money, or graunteth to him by his deede an annuitie or yearely penſion, or leaſſeth to him by deed landes or tenements for terme of yeares, any of theſe actes do imply an enfranchiſement.

Likewiſe if the Lorde maketh a feoffement to his villaine, and maketh vnto him liuerie of ſeiſin, this alſo is an infranchiſement and ſecrete Manumiſſion. Briefly to ſpeake, whereſoeuer the Lord compelleth his villaine by the courſe of the Lawe to doe that thing, that hee might otherwiſe enforce him to doe or to ſuffer, without the authoritie and compulſion of the law, he doth by implication infranchiſe his villaine, as if the Lord will bring againſt his villaine an action of dette, an action of accompt, of couenant or of treſpas, theſe and ſuch like be in the eye of the lawe enfranchiſements and Manumiſſions, becauſe that the Lorde in all theſe caſes may haue the effect & purpoſe of his ſuite, that What actes maketh Manumiſſion in Lawe. Cauſes of infranchiſement.

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that is to say, the goods, cattels, and correction of his bondman, without the compulsion of that law, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth sue his villaine by an appeale of felonie, the villaine being lawfully endited of the same before, this is no tacite manumission or infranchisement, for the lord though he haue power to beate his villaine and to spoyle him of his goods, yet hee cannot by the Lawe of this Realme put him to death.

Yee shall also vnderstand, that if a mans bondman purchase landes, or acquire and get vnto him any other thing, the lord may forthwith enter and sease the same into his owne handes. Wherefore if the Lorde will bring against his villayne a Præcipe quod reddat, by which he demaundeth against his villaine any landes or tenements, this implieth an infranchisement, for asmuch as hee bindeth himselfe to the prescript and authoritie of the law, whereas hee might vse his owne authoritie by entering and seasing the said lands.

Finally yee shall marke that some villaines be called villaines in grosse, and other some be called villaines regardant. In grosse be they of which the Lorde is severally seased, and not by reason of any lordship or manor, but they bee called regardant which doe belong to a Manor of which the Lord is seased, & the said villaines haue bene regardant, that is to say expectant & attendant, time out of mind to the Lord of the said Manor in doing vnto him such ser-

uices

uices as to a villaine appertaineth.

Of auncient demeſne. Chap. 35.

There is alſo a certayne kinde of tenure which is called auncient demeſne, & thoſe tenaunts which holde by this ſeruice, be freeholders, & by charter, & not by copie or court rolle, or by the verge after the cuſtome of the manor, at the will of the Lord. And theſe tenãts be ſuch as holde of thoſe Manors which were S. Edwards the King or which were in the hands of king William the cõquerour, & theſe Manors be called the auncient demeſnes of the King, or the auncient demeſnes of the crowne of England. And to ſuch tenants which hold of ſuch manors be many and diuers liberties giuen and graunted by the lawe, as to be quite of toll & paſſage, & ſuch like impoſitions, which be demaunded of men for their goods and cattels ſold or bought in fayres & markets by them, alſo to be quite and free of taxe & tallage graunted by Parliament, except that the kinges mateſtie doe taxe auncient demeſne as to him onely appertaineth, when hee thinketh good for great & vrgent conſiderations. Tenants alſo of auncient demeſne ought to be quite of payments to the expences and charges of the knights which come to the Parliament, alſo they ought not to be impanelled nor put in iuries, and enqueſts in the countrey, out of their manors or ſeignory of auncient demeſne, for the landes which they hold of ſuch manor, vnleſſe they haue other lãds at the common lawe, for which they ought to be charged. And if ſuch tenaunts or any of them

which

which hold of the Manor of auncient demeſne be diſtrained to do vnto their Lord other ſeruices or cuſtomes then they or their auncestours haue vſed to doe, then may they ſue a certaine writte called a Monſtrauerunt, directed to the Lord, commaunding him that he diſtraine them not for to doe other ſeruices or cuſtomes then they haue bene accuſtomed to do.

Writ of Monſtrauerunt.

And for further knowledge hereof, yee ſhall vnderſtād that in the Eſcheker there is a booke called domeſday, which booke was made in the time of the ſaid ſaint Edward. And al the lands which were in the ſeiſin, and in the handes of the ſaid ſaint Edward at the time of the making of the ſaid booke bee auncient demeane.

But the lands which then were in other mēs handes though they be written in the ſaid booke be franke fee and no auncient demeſne.

Franke fee.

Finally it is to be noted, that tenants of auncient demeſne ſhall not bee impleaded for their ſaid lāds out of the manor whereof they ſo hold, & if they be, they may ſhew the matter & abate the writ. But if they once aunſwere to the writ and iudgement giuen, then the lands haue loſt the nature & beneſite of auncient demeſne, & are becomē franke fee, that is to ſay, pleadable at the common law for euermore. And thus haue we ſpoken of the diuerſitie of tenures.

Abatement of the writ.

Of Rents. Chap. 36.

FOraſmuch as vpon euery tenure there is commonly reſerued one rent or other, therefore I thinke it good ſomewhat to treate of rents. But yee muſt vnderſtand that there be

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sundry sorts of rents. There is one kind of rēt which is called Rent seruice. Another which is called Charge, and the third which is named in Frēch Rent secke, that is to say, in Latin Redditus siccus, a drie rent. Now rent seruice is so called because it is knit to the tenure, and is as it were a seruice whereby a mā holdeth his lāds or tenements, or at the least way when the rents be vnseuerably coupled & knit with the seruice, as for an example, where the tenant holdeth his land of the king, or of any other lord by fealty & by certaine rent, or by homage, fealty, & by certaine rent, or by any other sorts of seruices & by certaine rent, this rēt is called rent seruice. And here ye shall note that if this rent seruice be at any time when it ought to be payd, behinde and vnpaid, the Lord of whom the land or tenement is so holden, whether it be in fee simple, fee taile, for terme of life, for yeeres, or at will, may of common right enter and distraine for the rent, though there bee no mention at all, ne cause of distresse put in the deede or lease. I said before that the nature of this rent seruice is to be coupled and knit to the tenure. For where no tenure is there can be no rent seruice. And therefore if at this day I be seased of landes of fee simple, and make a deede of feoffement of the same to an other in fee simple, reseruing by the same deed a rent, this can be called no rent seruice, because there can bee now no tenure betweene the feoffour and the feoffee. Otherwise it is of feoffements in fee simple made before the Statute of Westminster the third. cap. 1. called Quia emptores terrarum. For before the

Diuision of rēt seruice.

Distresse of cōmon right.

making

making of that ſtatute, if a man had made a feoffement in fee ſimple, reſeruing to him a certaine rent, yet though it had beene without deed, here had bene begun & created a new tenure between the feoffour and the feffee, and the feffee ſhould haue holde of the feoffour, who by vertue of the ſame might of cõmon right haue diſtrained for ſuch rẽt. But at this day by force of the ſaid act, there cã be no ſuch holding or tenure created or begun, & conſequently no rent ſeruice can be at this day reſerued vpon any gift in fee ſimple, except it be in the Kinges caſe, who beyng chiefe Lord of all, euer might & may, giue lands to be holden of him. Thus ye ſee, that at this day, no ſubiect cã reſerue any rent ſeruice vnto him vnleſſe the reuerciõ of the lands or tenemẽts that he ſhal graũt, be ſtil in him, as where he graunteth them in fee taile, or maketh but a leaſe for terme of life, or for certaine yeeres or els at will.

For in all theſe caſes the reuerſion of the fee ſimple remayneth ſtill in him, and therefore if here be any rent reſerued it is to be called a rent ſeruice, and is of common right diſtreynable though there be no clauſe of diſtreſſe in the deed of feoffement or leaſe.

But here yee will aſke mee, when in the caſe before remẽbred a mã at this day giueth cleane away the land or tenement from himſelfe in fee ſimple, ſo that there is no maner of reuerſion of the ſame remaining in him at all, & yet neuertheleſſe reſerueth vnto him by his deede a certaine rent what maner of rent ſhall this be called: I aunſwere, if there bee in the deed indented any clauſe of diſtreſs, that is, that if the rent be behind

hind vnpayed, it shall be lawfull for the feoffour to enter & to distraine, it is called a rent charge, for asmuch as the lande is charged therewith, but how? of common right, no, but only by vertue & force of the writing. But on thother side if there be no such clause of distresse put in the indenture, then the rent so reserued shalbe called a rent secke. Charge.

Likewise if a man that is seased of certaine landes, will graunt eyther by Indenture or by his deed polle, that is to say, single & not indented, a yeerely rent out of the same lands to an other, whether it bee in fee simple, fee tayle, for terme of lyfe, for yeeres, or at will, with clause of distres, then this rent is called a rent charge, & he to whom such rent is grãted, may for default of payment thereof enter & distraine. But contrary if the graunt bee made without any such clause of distres, it is called a rent secke, that is to say, a drie rent, because he cãnot come to it, in case it be demed by way of distres, in so much ỹ if he were neuer seased of it, hee is by the course of the cõmon law without remedy. Otherwise it is of a rent charge, for here, hee to whom the grant is made whẽ the rẽt is behind, may chose whether he will sue a writte of Annuity against the graũtor, or distreine for the rent behind, and retaine the distres till the time he be paid accordingly. But he cã not haue both remedies together, but must take him to the one, for if he once recouer by a writte of Annuity, then is the land discharged. And if hee sue not his writte of annuitie, but distreine for the arrerages, and the tenaunt sueth a repleuin, whereupon the other Annuity.

answereth

auoweth the taking of the diſtres in court of re-
cord, thē is the land charged, & the perſon of the
Eſtopple. graunto⁹ diſcharged of the action of annuitie.

Yee ſhall alſo vnderſtand, that if a man will
that another ſhall haue a rent charge comming
out of his lande, and yet will not that his per-
ſon ſhalbe by any meanes charged by writte of
annuitie, he may then haue ſuch clauſe in the end
Prouiſo. of his deed. Prouiſo quod preſens ſcriptum, nec
quicquam in eo contentū vllo pacto ſe extendat
ad onerandum perſonam meam, per breue ſeu
actionem de annuitate, ſed tantummodo valeat
ad onerandum terras, fundos, & teneméta mea,
de annuo redditu prædicto. If this o⁹ ſuch like
clauſe be added, then the lande is charged & the
perſon of the graunto⁹ is diſcharged.

Alſo if a man will make a deed of graunt in
this wiſe, that if John at Stile be not yearely
paide at the feaſt of Chriſtmas fo⁹ terme of his
life xx. ſhillings ſterling, that then it ſhalbe
lawfull fo⁹ the ſaid John at Stile, to diſtraine
fo⁹ it in the Mano⁹ of Dale, this is a good rent
charge, becauſe the Mano⁹ is charged with the
rent by way of diſtres, & yet neuertheles in this
caſe the perſon of him that made ſuch deede is
diſcharged of any action of annuitie, fo⁹aſmuch
as he graunted not by his deed any annuitie to
the ſaid John at Stile, but onely graunted that
he might diſtraine fo⁹ ſuch yeerely rent.

Furthermo⁹e yee ſhall note, that if a mā hath
a rent charge to him and to his heires com-
ming out of certayne landes, and doth pur-
chaſe any parcell of theſe landes, to him and to
his heires, in this caſe the whole rent charge is

quen-

quenched and gone, and the annuitie alſo, the cauſe is this, that a rent charge cannot bee in ſuch caſe appoꝛcioned. Otherwiſe it is of a rent ſeruice, as foꝛ example, if one which hath a rent ſeruice of xx. ſ. by yeare, doth purchaſe parcell of the land, out of which this yearely rent of xx. ſ. is comming, this ſhall not extinguiſhe oꝛ dꝛowne the whole rent, but foꝛ the parcell onely. Foꝛ rent ſeruice in ſuch caſe may very well bee appoꝛcioned and rated accoꝛding to the ualue of the land. Yet there be ſome ſoꝛts of rentes ſeruices which in no wiſe can bee appoꝛcioned. As where a tenant holdeth his land of his loꝛd by the ſeruice, to render to his Loꝛd yearely at ſuch a feaſt, an hoꝛſe lading of goꝛde, a redde roſe, a gylliuer oꝛ ſuch like, if in this caſe the loꝛd doth purchaſe parcell of the lande thus of him holden, this ſeruice is gone, becauſe ſuch ſeruice cannot be ſeuered and appoꝛcioned. Alſo eſcuage is a ſeruice that may bee very well appoꝛcioned, accoꝛding to the difference and rate of the land.

Extinguiſhment.

Rent ſeruice cannot be appoꝛcioned.

But where any lande is holden by homage & fealtie, if the Loꝛd purchaſe parcell of the land, yet hee ſhall haue his homage and fealtie ſtill of his tenaunt.

Yee ſhall marke alſo, that if a man maketh a leaſe of lands to an other foꝛ terme of life, reſeruing to him certaine rent, if in this caſe he grãteth that rent to John at Stile, ſauing to himſelfe the reuerſion of the ſaid land, this rent is but rent ſecke, becauſe John at Stile that hath the rent, hath nothing in reuerſion of the land.

But if he grauunteth the reuerſion of the land

to John at Noke for terme of life, and the tenant attorneth accordingly, then hath John at Noke the rent as rent seruice, because hee hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is if a man giueth landes or tenements in taile, reseruing to him & to his heires certaine rent, or maketh a lease of the land for terme of life, reseruing certaine rent, if hee granteth the reuersion to an other and the tenant atturneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case bee incident to the reuersion, and doe passe by the graunt of the reuersion. But if he had graunted the rent onely, it had beene a rent secke,

What remedie a man hath to recouer his rent when it is behind. Chap. 37.

I shewed you before, that for a rent seruice if it be behind, ye may distraine in the grounde euen of common right, though there bee no such clause of distresse mentioned in the deede of feoffement, graunt or lease.

Also for a rēt charge ye may distrain or bring your writte of annuitie at your choise and election as before is declared. But of a rent secke if yee were neuer seised of it, nor of any parcell thereof yee be without remedie by course of the common lawe, for yee cannot distraine for it, nor yet bring your writte of annuitie, but if yee were once seised of it or of parcell thereof, & it is eftsoones behind, then your remedy shalbe this, yee must go either by your selfe, or by your de-

putte to the lande or tenement out of which the rent is comming, and there demaund the arrerages of the rent, which if the tenaunt denie to pay, this deniall is disseisin of the rent. Also if the tenant bee not then ready to pay it, this coniuratleth a denial, which is a disseisin. Disseisin of rent seeke.

Moreouer, if neither the tenaunt nor no other man be remaining vpon the ground to pay the rent when ye demaund the arrerages, this also is a deniall in the Lawe, and is in verie deed a disseisin. And for these disseisins ye may haue an assise of Nouel disseisin against the tenant and shall recouer seisin of the rent, and the arrerages and your damages and costs of your writte, and of your plee. And if after such recouerie and execution had, the rent bee againe at another time denied you, thē ye may haue a writ of Redisseisin and shall recouer your double damages &c. Assise. Redisseisin double damages.

It shall be therefore wisdom for a man when a rent is granted by any person vnto him, to take of the tenaunt of the lande a penie or an halfe pennie in name of seysin of the rent, and then if at the next day of payment the rent be denied him, hee may haue an assise of Nouel disseisin. And ye shall note, that there be three causes of disseisin of rent seruice, that is to witte, rescous, replevin, and inclosure. Rescouse is when the Lorde vpon the land holden of him distrayneth for his rent behinde, and the distresse bee rescewed from him, or if the lord come vpon the lande to distreine, and the tenaunt or any other man for him will not suffer him, that is called Rescous. Three causes of disseisin of rent seruice.

Repleuin.

Repleuin is, when the Lord hath distrained and repleuin is made of the distresse by writte or by plaint.

Enclosuer.

Enclosuer is where landes or tenements be so inclosed, that the Lord cannot come within the lands or tenements for to distraine. And the chiefe cause why such thinges so made be disseisin to the Lord, is forasmuch as the lord is by this way disturbed of the meane and remedie, wherby he ought to come and haue his rent, that is to wit, by distresse.

Foure causes of disseisin of rent charge.

And there be foure causes of disseisin of a rēt, charge, that is to wit, rescous, repleuin, enclosuer & denier. For denier, or denial, is as well a disseisin of a rēt charge, as it is of rent secke. Finally ye shal vnderstād, þ there be two causes of disseisin of rent secke, that is dentall & inclosuer.

And two of rent secke.

And it seemeth that there is yet another cause of disseisin of all the three rentes aforesaid, that is to witte, this, when the lord commeth to the land holden of him, or when he that hath a rent charge, or a rent secke cōmeth to the lande to distraine for the rent behind, or to demād þ rent, & the tenāt hearing this, encountreth him, & forestalleth him the way with force and armes, and manaseth him in such sort, as hee dare not come to the ground for to distrain for his rent behind for feare of death or mutilation of his members: This is a disseisin because the partie is disturbed of his meane, and lawfull remedie whereby he ought to come to his rent.

Finally, ye shall obserue and marke, that by an acte of Parliament made in the xvij. yeare of our soueraigne Lorde king Henrie the eight, it is lawfull for the executours and administratours

tonrs of tenants in fee ſimple, tenaunts in fee taile, tenants for terme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee fermes, for arrerages of ſuch rentes as were due vnto their teſtatours in their liues, either to diſtraine for the ſame, or at their election to bring an actiō of det, except in ſuch lordſhips in Wales or in the Marches thereof, whereas the tenants haue vſed time out of mind, to pay vnto euerie Lord at his firſt entrie into the lordſhip any ſum of money, for the redemption of all maner of outcries and penalties incurred at any time before their lords entrie. Diſtres or action of det.

Alſo by force of the ſaid act the huſbād which was ſeiſed in the right of his wife, may after the death of his wife eyther diſtrayne or bring an action of det for the arrerages of ſuch rentes as were due and vnpaid in her life.

Likewiſe it is of him ẏ hath a rent for terme of an other mans life, if hee for terme of whoſe life hee hath the rent dieth, yet by vertue of the ſaid act hee or his executors and adminiſtrators, may either diſtraine or bring an action of det for the arrerages due before the death of him, for terme of whoſe life he had the rent.

How auowries ought to be made of rents, and ſeruices, enacted. An. 21. H. 8. Chap. 38.

WHere any lands be holden of any perſon by rents, cuſtomes, or ſeruices, if the Lorde diſtraine vpon the ſame lands for any ſuch rents, cuſtomes, or ſeruices, and repleuin thereof bee ſued, the Lorde may

auow, or his baylife or seruant may make conisance or iustifie the taking vpon the same lāds, as within his fee and seignorie, alledging in the said auowrie, conisance or iustification, the same lands to be holden of him without naming any person certaine to be tenant of the same, & without making any auowry iustificatiō or conisāce vpon any person certaine. And if the iorie vpon euerie writ sued of the second deliuerance. And they that make any such auowrie, iustificatiō, or conisaunce, if the same auowrie, conisaunce, or iustification bee found for them, or the plaintife be non sute, or otherwise barred, then they shall recouer their whole damages and costes.

Also the said plaintifes and defendants shall haue like plees, and one aide prier (plees of disclaimer onely except) as they might haue had before the making of this act.

Plees in auowrie.

Also such persons as by the cōmon law may ioyne to the plaintife or defendaunt in the saide writs of Replegiare or second deliuerance, as well without processe as by processe, shall from henceforth also in this case ioyne vnto them aswell without processe as by processe, & haue like plees & like aduauntages in all things (disclaimer onely except) as they might haue by the cōmon law before this act,

An act for the assurance of fermours made. An. 32. H. 8. Chap. 39.

ALl leases hereafter to bee made of any landes, or other hereditamentes, by writing indented vnder seale, for terme of yeares, or for terme of life, by any persons being of

of the age of xxj. yeres, hauing any state of inheritāce either in fee simple, or in fee taile in their owne right, or in the right of their churches, or wiues, or iointly with their wiues, shal be good and effectuall against the lessours, their wiues heires & successors, according to the estate comprised in such indenture of lease.

Prouided that this acte shall neither extende to any leases to be made, of any landes, or hereditaments, being in the hands of any termours by vertue of any olde lease, vnlesse the same olde lease be expired, surrēdred, or ended within one yeare after the making of the new lease, nor yet to any graunt to bee made of the reuersion of any landes or hereditamentes, nor to any lease of such lands or hereditaments, as haue not commonly beene letten to farme by the space of xx. yeares next before such lease therof made, nor to any lease to bee made without impeachment of wast, nor to any lease to be made aboue ỹ number of xxj. yeares or three liues, at the most frō the day of the making therof. And that vpō such leas be reserued yearely during the same, due & patable to the lessors their heires & successors, to whom the lād should haue come after the death of the successors, & to whom the reuersion therof shall pertaine according to their estates & interests, so much yearely rent or more, as hath bene accustomably yeelded for ỹ same, vnto xx. yeares next before such leases, and that he to whom the reuersion therof shal pertain, after the death of such lessors or their heires, shall haue such like remedie and aduauntage against the termours therof their executours and assignes, as the

Surrender of the old lease.

lesso2 himselfe should haue had.

The wife shall be partie to the lease.

Prouided also that the wife bee made partie to euerie such lease as shall be made by her husband, of any lands being the inheritance of the wife, and that euerie such lease bee made by indenture in the name of the husbande & his wife, and she to seale thereunto. And that the rent be reserued to the husband and wife, & to the heires of the wife, according to her state of inheritance therein. And that the husband shall in no wise alien discharge grãt, o2 giue away the same rent reserued, no2 any part thereof, longer then during the couerture, without it bee by fine leuied by the said husband and wife.

Prouided furthermo2e that this acte extende not to giue libertie o2 power to any persons to take any moe fermes, leases, o2 taking of any lands o2 other hereditaments, then they might haue done before the making of this act, no2 yet extend to giue any liberty to any parson o2 vicar of any church o2 vicarage, fo2 to make any lease o2 grant of any of their messuages, landes, tenements, tithes, p2offits o2 hereditaments belonging to their Churches o2 Vicarages, otherwise then they might haue done before the making hereof. Anno 32. H. 8.

What grant by a corporation is good.

It is furthermo2e enacted, that the graunt, lease, o2 gift, o2 election, of the gouernour o2 ruler of any hospitall, colledge, Deanery o2 other Corporation, with the assent of the mo2e part of such of the same as haue voice thereunto, shall bee good and effectuall, any rule o2 statute made by any founder to the contrary, notwithstanding.

Of

Of falsifying of recoueries by fermours enacted. Anno xxj. H. viij. Chap. 40.

ALL fermours or Lesses for terme of yeeres, may falsifie for their terme onely recoueries had by fayned titles, as well as tenaunt in fre hold, And the same fermours their executours and assignes shall enioy their saide termes according to their leases against such recoueries euen as if none such had beene suffered. In which case nevertheless the recouerer, after such recouerie had, shall haue like remedie against the fermours, by auowry, or action of debt for rents and seruices reserued vpon the same leases beyng due afore the same recoueries, & like actions for wast done after the same recoueries as the lessour might haue had, if no such recovery had beene had. Furthermore no Statute staple, statute Marchant, nor execution by Elegit, shall be auoided by any such fained recouerie, but like remedie shall be had to auoid and falsifie the said recouerie, as is ordained for the fermour or lessee for terme of yeeres.

Auowry or action of debt.

Of tithes and how they shall be recouered, enacted. Anno 32. H. 8. Chap. 41.

ALL persons shall truely pay their tithes, and offerings, according to the lawfull customes, and vsages of parishes, and places where such Tithes or dueties bee due. And if they doe wilfully withholde any parcell of them; the partie whether he bee ecclesiasticall

ſlaſticall, or lay that ſhould haue them, may conuent ſuch perſons before the ordinarie his commiſſary or other competent Miniſter or iudge of the place where ſuch wrong ſhalbe done, according to the eccleſiaſticall lawes. And in euery ſuch cauſe or ſuite, the ſame Ordinarie or Iudge hauing the parties or their procurator before him, ſhall proceede to the determination therof ordinarily or ſummarily, according to the courſe of the ſaid Lawes, and thereupon ſhall giue ſentence according.

And in caſe any of the parties of any matter concerning that ſuit doe appeale from the ſentence & diffinitiue iudgement of the ſaid Iudge, then the ſame Iudge forthwith vpon appellation made, ſhall adiudge to the other partie the reaſonable coſtes of his ſuite, and ſhall compell the ſame partie appellant to pay the ſame by compulſary proceſſe & cenſure of the ſaid lawes taking ſuretie of the other partie to whom ſuch coſtes ſhall be adiudged to reſtore the ſame to the appellant, if afterward the principall cauſe of that ſuit of appeale ſhalbe adiudged againſt him. And ſo euery iudge Eccleſiaſticall, ſhall iudge coſtes to the other party vpon euery appeale to bee made in any ſuite or cauſe of ſubtraction or detention of any tithes or offering, or in any other ſuite to be made concerning duties of ſuch tithes or offerings.

And if any perſons after ſuch ſentence giuen againſt them, ſhall obſtinately refuſe to pay their tithes or duties or ſuch ſummes of money ſo adiudged wherein they be condemned, then two Iuſtices of the peace of the ſame Shire, whereof

whereof one to be of the Quorum, shall vpon certificat or complaint to them made in writing by the Iudge that gaue the sentence, cause them to be attached and committed to the next Iayle, there to remaine without baile or mainprise, till they shall haue found sufficient suerties to bee bound by recognisance or otherwise before the same Iustices to the kings vse for the performance of the said iudgement.

Prouided, that no person shall be sued or otherwise compelled to pay any tithes for any lands, tenements, or hereditaments, which by the lawes of this realme are discharged, or not chargeable with the payment of any such tithes.

Also this act shall in no wise binde the inhabitants of London, and Suburbes of the same, to pay their tithes & offerings within the same Citie and suburbes, otherwise then they should haue done before.

Furthermore if any hauing an inheritaunce, freehold, terme or interest, in any personage, vicarage, porcion, pencion, tithes, oblations or other ecclesiasticall profite made or to bee made temporall, or admitted to be in temporall hands by the lawes or statutes of this realme, be disseised or otherwise put from the same, or any other person claiming to haue interest therein, the person so disseised or wrongfully put from his said right or possession, his heire, wife, and other to whom such wrong shalbe done, may haue remedie in the Kings temporall Courts, as the case shall require for the recouery thereof by writs originall of Præc. quod reddat, assi. of nouell disseisin, Mordanc, Quod ei deforceat, writs

of

of dower, or other writs originall to be graunted in the chauncery, of euery such personage, vicarage portion, pension, or other profit ecclesiasticall, according to the nature of the suit therof. And writs of couenaunt & other writs for fines to be leuied, & all other assurances to be made of any such personage or profits ecclesiastical, shall be deuised & granted there, like as hath bin vsed for fines to be leuied and assurance to be had of lands or other hereditaments, & all iudgements giuen vpon such writs originall graunted for any the premises, and all fines leuied & knowledged in any of the kings said courts thereof, shall be of like force as iudgement giuen, and fines leuied of lands, tenements and hereditaments.

Of Mortuaries enacted. An. 21. H. 8. Chap. 42.

NO person spirituall, their fermours or baylifes, shall call any person before any iudge Spirituall, for the recouerie of any Mortuaries, more then is hereafter mentioned, vpon payne to forfait for euery time so much to value as they shall take above the same here limited, & ouer that xl. s. to the party grieued, for which he shall haue an action of debt by writ, bill, or information, wherein no wager of lawe, essoine, nor protection, shall be allowed.

First no Mortuarie shal be take of any which at his death hath in moueable goods vnder the value of ten markes. Also no mortuarie shall be taken but onely where mortuaries haue beene vsed to be paid, and there after the forme hereafter mentioned. Nor in no mo places but one,

that is to wit, there where his moſt abiding is, and there but one. Nor no perſon ſhall take for the Mortuary of any perſon being at his death of the value of ten markes aboue his debts paid and vnder xxx.li. aboue iij.s. iiij.d. And of the value of xxx.li. and vnder xl. not aboue vj.s. viij.d. And of the value of ix.li. or aboue, of any ſumme whatſoeuer it be: not aboue x.s.

Alſo no mortuarie ſhalbe aſked nor paid for any woman couert baron, or childe, or any perſon not keeping houſe, or for any wayfaring mã but the Mortuaries of ſuch wayfaring men, be aunſwerable in that place where they had their moſt dwelling at the time of their death.

Neuertheles ſuch ſpirituall perſon may take any thing, which ſhal be diſpoſed or bequeathed to him, or to the high aulter of the Church.

Alſo nothing ſhalbe taken for Mortuary in Wales, nor in the Marches of the ſame, nor in Calis or Warwick, or ỹ marches of ỹ ſame, but only in ſuch places of the ſame, where Mortuaries haue bin accuſtomed to be paid, & there but onely after the forme aboue ſpecified. Prouided that the biſhops of Bangor, Landaf, S. Dauids, & S. Aſſe, and the Archdeacon of Cheſter, may take ſuch mortuaries of the prieſtes within their dioces & iuriſdictions, as heretofore haue bin accuſtomed. Prouided alſo ỹ in ſuch places where mortuaries haue beene accuſtomed to be taken of leſſe value, none ſhalbe cõpelled to pay any other mortuary or more for any mortuary, then hath beene accuſtomed, nor no mortuarie there ſhall be demaunded of any perſon exempt by this acte vpon paine afore limited.

Of

Chap. 43.

IT is called a discontinuance by the lawes of England, where he that hath the possession of landes or tenements for the time present, and yet not hauing the fee simple in himselfe, nor in his owne right onely, maketh an alienation of the same to another by reason whereof he that should haue them after him, and which then hath right vnto them cannot enter, but is driuen to his remedie by way of action, in such wise that the said lands be not vtterly shifted and gone from such person or persons as haue right vnto them, but be all onely discontinued for a tyme, till the person which after the death of such discontinuer hath right vnto them, do continue and bring them home againe, not by entrie, but by suite and way of action. As for example, a tenaunt in tayle of certaine landes, doth enfeoffe another in the same, in fee simple or fee tayle, and hath issue and dieth, his issue cannot enter into the landes though he hath title and right vnto them, but is put to his action, which is called a Formedon in the descender. And if such tenaunt entayle which maketh such a feoffement, hath no issue at time of his death, it is yet neuertheleſſe a discontinuance to him which is eyther in the reuersion or in the remainder, so that neyther the one nor the other can enter, but be driuen to their action he in the reuersion to his formedon in the reuerter, and he in the remainder to his formedon in the remainder.

Formedon in the discender.

Formedon in the reuerter or remainder.

In like manner if a bishop doth alien landes which bee parcell of his bishoprick and dieth, this

this is a diſcontinuance of his ſucceſſour for aſ-
much as he cānot enter, but is driuē to his writt
of entrie ſine aſſenſu capitulī.

Entre ſine aſſenſu capitulī.

Semblable, if a Deane be ſole ſeaſed of lāds
in the right of his Deanery, & maketh ſuch an
alienation, this is a diſcontinuance to his ſuc-
ceſſour. Alſo if the maſter of an hoſpitall alie-
neth any lands of his hoſpitall, that is a diſcon-
tinuance and his ſucceſſor cannot enter, but is
put to his writt. De ingreſſu ſine aſſenſu confra-
trum, & ſororum.

Ingreſſu ſine aſſenſu confratrum, & ſororum.

But if a parſon or a vicar of a Church, will
alien any of his glebe landes to an other in fee
ſimple or fee tayle, and dieth, or reſigneth his be-
neſice, this is no diſcontinuance to his ſucceſ-
ſour, but he may very well enter notwithſtan-
ding ſuch alienation made by his predeceſſour.
And the higheſt writ that a parſon can haue if
his predeceſſor hath alened his glebe land, or
loſt it by default, or reddition, is a Iuris vtrum.

Reddition, ỹ is voluntarie yeelding.

And furthermore note, ỹ no tenant of the lād
can by his or their act, diſcontinue ỹ right of him
in the reuerſion, vnles it be by feoffemēt with li-
uery & ſeaſon, or els by a releas with warrantie.

And note that ſuch thinges as paſſe by way
of grant by deed without liuery and ſeaſon, can-
not be diſcontinued, as an aduowſon, cōmon, or
a villaine in groſſe, reuerſion, rent charge, com-
mon for beaſtes certaine, and ſuch other like.

Alſo yee ſhall vnderſtand, that in the xxxij.
yeere of King Hen. viij. it was enacted that
no fine, feoffement or other act to be made or ſuf-
fered by the huſband onely, of any landes or
tenements being the inheritaunce or freehold

of

Chap. 43.

IT is called a diſcontinuance by the lawes of England, where he that hath the poſſeſſion of landes or tenements for the time preſent, and yet not hauing the fee ſimple in himſelfe, nor in his owne right onely, maketh an alienation of the ſame to another by reaſon whereof he that ſhould haue them after him, and which then hath right vnto them cannot enter, but is driuen to his remedie by way of action, in ſuch wiſe that the ſaid landes be not vtterly ſhifted and gone from ſuch perſon or perſons as haue right vnto them, but be all onely diſcontinued for a tyme, till the perſon which after the death of ſuch diſcontinuer hath right vnto them, do continue and bring them home againe, not by entrie, but by ſuite and way of action. As for example, a tenaunt in tayle of certaine landes, doth enfeoffe another in the ſame, in fee ſimple or fee tayle, and hath iſſue and dieth, his iſſue cannot enter into the landes though he hath title and right vnto them, but is put to his action, which is called a Formedon in the deſcender. And if ſuch tenaunt entayle which maketh ſuch a feoffement, hath no iſſue at time of his death, it is yet neuertheleſſe a diſcontinuance to him which is eyther in the reuerſion or in the remainder, ſo that neyther the one nor the other can enter, but be driuen to their action he in the reuerſion to his formedon in the reuerter, and he in the remainder to his formedon in the remainder.

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fered by the huſband onely, of any landes or
tenements being the inheritaunce or freeholde
of

his wife, during the couerture betweene them should be any discontinuance thereof or be prejudicial or hurtful to the said wife or to her heirs or to such as should haue right, title, or interest to the same by the death of such wyfe, but that the same wife and her heires, and such other to whom such right should appertaine after her decease, may then lawfully enter into all such landes and tenements, according to their rights and titles therein.

How recoueries by collusion against tenants for terme of life, is no discontinuance. enacted. Anno 32. H. 8. Chap. 44.

Where diuers persons seased of lands and hereditaments, as tenaunts by the curtesie of England, or otherwise onely for terme of life or liues, haue heretofore suffered other persons by agreement or couine betweene them had, to recouer the same against thē in the kings court, by reason wherof, they to whom the reuersiō or remainder therof, hath belonged, haue after the deaths of such tenants beene driuen to their actions for the recontinuance & obtaining of the said landes and tenements so recouered, & sometime haue beene cleerely disherited of the same, it is enacted that all such recoueries hereafter to be had by agreement of the party, or by couin, or against any such particuler tenaunt of landes or hereditaments, whereof he is, or hereafter shall be seased, as tenaunt by the curtesie of England, tenaunt in tayle after possibilitie of issue extinct,

or

or otherwise for terme of life, shall from henceforth as against such persons to whome the reuersion or remainder shall then appertaine and against their heires and successours bee clearely void. Prouided that this act extend not, to any person that shall by good title recouer any hereditaments without fraud or couin, against any such particular tenant, by reason of any former right or title, nor yet to auoide any recouery to be had against any such particuler tenant, by the assent & agreement of those in the reuersion or remainder, so that such assent & agreement do appeare of record in the kings court.

How wrongfull disseisin is no discent in the law, enacted. Anno 32. H. 8. Chap. 45.

WHere diuers psons haue by strength, and without title entered into landes and tenementes, and wrongfully disseised and dispossessed the rightfull owners and possessours thereof, and so being seased by disseisin, haue thereof dyed seased, by reason of which dying seased the parties that were so disseised and dispossessed, or such other persons as before such discent might haue lawfully entred into the said lands and tenements, bee thereby clearely excluded of their entrie into the lande, and put to their action for their remedy and recouery thereof, it is enacted, that the dying seased hereafter of any such disseisor hauing no right or title therein, shal not be deemed any such discent in the Lawe as to take away the entrie of such persons or the heyres, which at the time of the same discent had good title of entrie

into the ſame. Except that ſuch diſſeiſor hath had the peaceable poſſeſſion of his landes or tenementes whereof hee ſhall ſo die ſeiſed, by the ſpace of fiue yeares next after the diſſeiſin by him committed, without entrie or continuall claime, by ſuch as haue lawfull title thereunto.

The limitation of Preſcription, enacted, An. 32. H. 8. Chap. 46.

NO perſon ſhall ſue or maintaine any writ of right, or make any title or claime to any landes, tenementes, rentes, annuities, commons, pencions, porcions, corrodies or other hereditaments, of the poſſeſſion of his anceſtours or predeceſſours, & declare any further ſeiſin or poſſeſſion of his auncestour or predeceſſour, but onely of the ſeiſin or poſſeſſion of his auncestor or predeceſſor, which hath beene ſeiſed of the ſame within xl. yeares next before the feaſt of the ſame writte, or next before the ſaid title or claime ſo to be ſued.

Limitation of 40. yeares.

Alſo none ſhall ſue or maintetne any aſſiſe of Mordantceſtour, coſenage, ayle, writ of entrie vpon diſſeiſin done to any of his auncestours or predeceſſors, or any other action poſſeſſary vpon the poſſeſſion of any of his auncestors or predeceſſors, for lands or hereditaments of further ſeiſin or poſſeſſiō of thē, but onely his ſeiſin or poſſeſſion which was ſeiſed therof within 50. yeares next before the feaſt of the originall of the ſame writ. And none ſhall maintaine action for lands or other hereditaments vpon his owne ſeiſin or poſſeſſion therein, aboue 30. yeares next before the feaſt of the originall of the ſame writ.

Limitation of 50. yeares.

Limitation of 30. yeares.

Item

Item none ſhall make any auowȝie oȝ conſ-
ſance foȝ a rẽt, ſuite, oȝ ſeruice, & alledge any ſea-
ſin of the ſame in his auowȝie oȝ conſaunce in
poſſeſſion of his anceſtoȝs oȝ pȝedeceſſoȝs, oȝ in
his owne poſſeſſion, oȝ in the poſſeſſion of any o-
ther, whoſe eſtate hee ſhall claime to haue aboue
50. yeares next beforȝe the making of the ſaid a- Auowry.
uowȝy oȝ conſance. Moȝeouer al Foȝmedons
in reuerter, Foȝmedons in remainder, & Scire
facias vpon fines of landes oȝ other hereditaments to be ſued, ſhalbe taken within 50. yeares
next after the title of action fallen. And if any do
ſue any of the ſaid actions oȝ wȝits foȝ lands oȝ
other hereditaments, oȝ make any auowȝie, co-
nſance, pȝeſcription oȝ claime foȝ any rent, ſuit,
ſeruice, oȝ other hereditamẽts, & if he pȝoue that
hee, oȝ his aunceſtoȝs oȝ pȝedeceſſoȝs were in ac-
tuall poſſeſſion oȝ ſeaſon therein, at any time
within the yeares beforȝe limited, if the ſame be
trauerſed oȝ denyed by the partie plaintife, de-
maundant oȝ auowant, oȝ by the party tenaunt
oȝ defendant, he and his heires ſhal from hence-
foȝth be vtterly barred foȝ euer, of euery the ſaid Barre.
wȝits, actions, auowȝies conſaunce, pȝeſcrip-
tion, title & claime hereafter to bee ſued oȝ made
foȝ the ſame landes oȝ other the pȝemiſſes, foȝ
which ſuch action, wȝit, auowȝie, conſaunce, ti-
tle oȝ claime hereafter ſhalbe ſued oȝ made.

Pȝouided, that all perſons which nowe
haue any of the ſaide actions, wȝits, auowȝies,
Scire facias, conſaunce, pȝeſcription, title, oȝ
claime depending, oȝ that hereafter ſhall ſue oȝ
bȝing any of the ſaide wȝittes, oȝ actions, oȝ
make any of the ſaide auowȝies, conſaunces,

Whether eſtate ſhall take effect.

preſcription, titles, or claime at any time before the feaſt of the Aſcention of our lord which ſhall be in the yeare of our Lord, 1546. ſhall alledge this ſeaſon of their auncеſtors, or predeceſſors or their owne poſſeſſion & ſeaſon, & alſo haue all other like aduantage in the ſame writs, actions, auowries, conſiſances, preſcriptions & claimes, as they might haue had before the making of this ſtatute. Prouided alſo, that if any perſon bee nowe within the age of xxj. yeares, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring any of the ſaide writtes or actions, or to make any auowries, conſiſaunces, preſcriptions, or claimes, it ſhalbe lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaide auowryes, conſiſaunces, titles, or claimes, at any time within ſixe yeares next after ſuch perſon now being within age, ſhal accompliſh the age of xxj. yeares or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their libertie, or now being out of this Realme, ſhall come and bee within this Realme. And that euerie ſuch perſon in their ſaid actions, auowries, conſiſances, titles or claimes, to be made ſued or commenced within the ſaid ſixe yeares, ſhall alledge the ſeaſon of their auncеſtours, or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhall then claime. And alſo within the ſame ſixe yeares ſhal haue like aduantage in the ſame, as they might haue had before the making of this act.

Prouided alſo, that if the ſaid perſons now being within age, or couert baron, in priſon or out

out of this realme, do die within age, or being couert or in priſon, or out of this Realme or deceaſe within vj. yeares next after they ſhall accomplish their full age, or ſhalbe at large within this realme, or ſhal become ſole & no determination or iudgement had of ſuch title, actions, or rights ſo to thē accrewed, then the next heire of ſuch perſons ſhall enioy, like aduauntage to ſue demaund, auowe, declare, or make their ſaid titles, claymes or preſcriptions within ſixe yeeres next after the death of ſuch perſons, as the ſaid infant after his full age, or the ſaid woman couert after the death of her huſbande, or the ſaid perſon being out of this Realme after his repaire or comming into the ſame, or the ſaide perſon impriſoned after his enlargement & comming out of priſon, might haue had within ſixe yeares then next enſuing by force of the prouiſion laſt before rehearſed.

¶ Prouided alſo, that if any perſons before the ſayd feaſt of the Aſcention, ſue any of the ſaide actions, or make any auowrie, title, or claime, and the ſame happen by the death of any the parties thereunto, to bee abated before iudgement or determination thereof had, then the ſaid perſons being demandants, or auowants, or making any ſuch conſiaunce, preſcription, title, or claime, being then a liue, and if not, then their next heyres, may commence their action, and make their auowrie, conſiaunce or clayme vpon the ſame matter, within one yeare next after ſuch ſuite abated, and ſhall haue like aduauntage to ſue demaund auow, declare, or make their ſaide title claymes or preſcription

within the said one yeere, as the demaundaunts in such writ or suite abated, or as such as did auow or make comsaunce, title, clayme or prescription might haue enioyed in the former action or suite.

Attaint vpon false verdict.

Prouided furthermore, that if any false verdict hereafter bee giuen in any of the said actions, suites, auowries, prescriptions, titles or claymes, then the partie grieued may haue his attaint vpon euery such verdict, & the plaintife in the same attaint vpon iudgement for him giuen, shall haue like recouerie, execution and other aduantage as hereafter hath beene vsed.

Of Fines. Chap. 47.

FInes haue their name, because they make a finall end and determination of all suites, strifes and debates betweene men. For the due leuying whereof it was enacted in the viij. yeare of King Henry the vij. that they must bee solempnly before the Iustices of the common place, redde and proclaymed the same Terme, and three Termes next following the ingrossement, at which tyme all the plees must cease. And such fines shalbe a sufficient barre and discharge against all persons sauing women that bee couerte baron, if such women bee not priuie to the same fine, or such as bee within age, in prison, out of the realme, or out of their right mindes. But these fines shall not conclude ne barre all Straungers which haue right to enter or to haue action, if they come within v. yeres after such proclamati-

ons

ons made or (in case the cause of action falleth vnto them after the fine so duely leuied) if they come & commence their action and suite within v. yeares next after such cause of action to thē accrued. And they may sue against the takers of the profites. But if they that haue right thereto be within age in prison, couert baron, or out of the realme, or not in their right memorie, then their title or entrie shall be saued vnto them till they be of full age, out of prison, discouered and sole within the realme, or of right mind, & then within fiue yeares after, their action or entrie, must be sued or made with effect.

Also by the said statute it shall be a good plee for all straūgers to say, that they that were parties to the fine nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore in the xxxij. yeare of this King, for thauoiding of certayne doubtes and ambiguities, it was enacted, that all fines as well heretofore leuyed, as hereafter to be leuyed, according to the said Statute of Henrie the vij. by any person of the full age of xxi. yeares, of any landes or other hereditamentes, being before the fine leuyed, in any wyse tailed vnto him or any of his auncestours in possession, reuersion, remainder or in vse, shalbe immediatly after the same fine leuied, ingrossed, and proclamation made a sufficient barre and discharge for euer, as well against him, & his heyres, claiming the same onely by force of any such entayle, as against all other to their vse, so that the same fines bee not leuied to any woman

after the death of her husband, contrarie to the statute made the 27. yeare of Henry the seuenth, of lands and tenementes of the inheritaunce of purchase of her husband or of any of his auncestors giuen to her in dower, for terme of life, or in taile, in vse, or in possession. Except also all fines leuied, or to be leuied, of any such landes or hereditaments by the owners thereof by any speciall acte of Parliament made sithe the saide fourth yeare of Henry the vij. be restrained from making any alienations, discontinuances or other alienations of the same. Also of such lands as bee now in suite and variaunce in any of the kinges Courtes, or whereof any euidences bee now in demaund in the Chauncery, or which be already recouered. Except also fines leuied, or to be leuied by any person of lands or tenemẽts graunted to him or to his auncestors in taile, either by the kinges letters patentes, or by vertue of any act of Parliament, whereof the reuersion is in the king. And confirmed in the 34. yeare of H. 8.

Of Testaments or last Willes. Chap. 48.

TEstamentum in Latine, is as much to say as mentis testatio, that is a declaration or witnessing of a mans minde. And there bee two sortes of Testamentes. The one is called Testamentum scriptum, that is, a written Testament, or last Will by writing: and the other is called Testamentum nuncupatiuum, a testament nuncupatiue, which is when a man doth expresse by mouth his laste will and

Diuision.

Written testament.

The testament nuncupatiue.

and teſtaments without writing, by calling before him certaine of his neighbours, in whoſe preſence he doth ſignifie by words his laſt mind and will. And this for the moſt part men vſe to do, when for feare of ſuddennes of death, they dare not abide the writing of their will. And this will (vnleſſe it be in certaine caſes) is as ſtronge and as ſure, as is a Teſtament or laſt will put in writing, and ſealed with the ſeale of the teſtator.

Alſo though a Teſtament by writing be not ſealed with the ſeale of the teſtator, yet is the teſtament good and effectuall in the law.

And yee ſhall alſo marke, that where a man maketh once his teſtament and will, and afterward maketh another will by words, if his laſt will be prooued before the ordinarie, and by him put in writing, and enſealed with his ſeale, ſuch laſt will ſhall auoid the firſt will, vnleſſe it be in ſpeciall caſes, and ſo alwaies the latter will and teſtament ſhall auoid the former.

Finally, by an acte made the xxj. yeere of king Henry the eight, it was ordayned that where part of the executors named in the Teſtament wherein any landes or tenements be willed to be ſolde by them, refuſe to take vpon them the adminiſtration: and the reſidue doe take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaid landes made only by thoſe executors that tooke ỹ adminiſtration of the teſtament vpon them, ſhould be as good and effectuall, as if all the reſidue of the executors ſo refuſing had ioyned in the making of the bargaine and ſale.

The

Assets in the hands of the executors.

EXecutors is when a man maketh his testament and last will, and therein nameth the person which shal execute his testament, the he ỹ is so named, is his executor, & such an executor shall haue an action against euery debtor of his testator. And if the executors haue assets, that is to say sufficient in their hands, then shall euery one to whom the testator was in det, haue actiõ against the executor, if he haue an obligation or specialty to shewe. But in euery case where the testator might wage his law, there no action lieth against the executor.

Executor of his owne wrong.

Administrator is he, to whom the ordinarie committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lie against him and for him as for an executor, and he shalbe charged to the value of the goods of the dead, and not further, if it be not by his false plee, or for that he hath wasted the goods of the dead. But if the administrators die, his executors be not administrators, but it behooueth the ordinarie to commit an new administration. Howbeit if a stranger, I meane him that is neyther executor named in the Testament and last will, nor yet administrator appointed by the ordinarie, will take the goods of the dead, and minister of his owne head and minde, without lawfull authority, this person shall be charged and sued as an executor, and not as an administrator in an action which is brought against him by any creditor. But if the Ordinary make a letter, ad

colligendum

colligendum bona defuncti, hee that hath ſuch a letter is not adminiſtrator, but the action lieth in this caſe againſt the ordinarie, as well as if he tooke the goods by his owne hand, or by the hand of any other his ſeruant, by any other commaundement.

An act of the probate of Teſtaments, made ann. xxi. Hen. viii. Chap. 50.

NOthing ſhall be taken by any hauing authoritie to take probation, inſtnuation, or approbation, of any teſtament where the goods of the teſtator, doe not amount aboue the value of C. s. except to the ſcribe for writing thereof vi. d. And for the commiſſion of adminiſtration of the goods of any dying inteſtate, not being likewiſe aboue C. s, vi. d. Alſo none hauing power to take probate of teſtaments, ſhall refuſe to approue teſtaments being lawfully offered vnto them in writing with waxe thereto affixed readie to be ſealed, ſo that they be lawfully proued before the ſame ordinarie to be true. And when the goods of the teſtator doe amount aboue an C. s. and not exceede xl. li. none ſhall take for the probation regiſtring, ſealing and writing of any ſuch teſtament aboue iii. s. vi. d. whereof to bee to them that haue authoritie to take the probation ii. s. vi. d. and the other xii. d. to the ſcribe for regiſtring.

And where the goods amount aboue xl. li. then only v. s. to be taken, whereof to be to them that haue authority to take the probation iij. s. and vj. d. and the other ij. s. vj. d. to the ſcribe for

for the regiſtring, or els if he refuſe that 2.s. 6.d. then he to haue for euery 12. lines euery line containing in length 12. inches a penny.

And they that haue authoritie as is aboue ſaid, ſhall approue, inſinuate, ſeale and regiſter the teſtaments, and deliuer them ſealed with the ſeale of their office to the executors for the ſumme aboueſaid, & that with conuenient ſpeede without any fruſtratory delay.

And if any perſon die inteſtate or the executors refuſe to proue the teſtament, then they hauing authority as is aboueſaid, ſhall grant the adminiſtration of the goods to the widow of the perſon deceaſed, or to the next of kin or to both after their diſcretion, taking ſurety of them for the true adminiſtration of the goods & debtes, which they ſhalbe ſo authoriſed to miniſter. And where one or diuers claime the adminiſtration as next of kinne, which be egal in degree of kinred, or where any one perſon deſireth the adminiſtration as next of kin where in deed diuers perſons be in equality of kinred, then in any ſuch caſe the ordinary ſhalbe at liberty, to take one or mo making requeſt. And where diuers require the adminiſtration, or where but one or mo of them, & not all being in like degree make requeſt, then the ordinary ſhal admit the widow, and him or them onely making requeſt or any of them, taking nothing for the ſame, where the perſon diſſeaſed died not worth C.s. And if he died worth C.s. & not aboue xl.li. then ii.s. vi.d. onely to be taken. And the executor or adminiſtrator calling to him the dettors two at the leaſt: or ſuch perſons to whom any legacy was made

made, and if they refuſe them, two next of kinne to the perſon deceaſed, & in their default, two other honeſt perſons ſhall by their diſcretions make a true inuētory indented of all the goods, which perſons ſwearing before ỹ biſhop or his officers to be true, ſhall deliuer ỹ one part thereof vnto thē, & the other keepe himſelf. And none hauing authority to take probate of teſtaments vpon payne contayned in this ſtatute, ſhall refuſe to take any ſuch inuentorie preſented or rendred to them. Inuentorie of goods.

Prouided, if any perſon ſhall diſpoſe or will by his teſtament any lands or hereditaments to be ſold, that the money or profits of the ſame, be accounted for goods or cattels.

And they hauing the authority aboueſaid vpō the deliuery of the ſeale & ſigne of the teſtatour, ſhall cauſe the ſame to be defaced & incontinent ſhall redeliuer to ỹ executor without any claime and if any require a copy of the teſtament & inuentory, then they hauing authority of their miniſters, ſhall without delay deliuer them a copy, taking therefore, or elſe for the regiſtring of the ſame as before, or elſe for euery ten lines 1.d.

Prouided, that where they hauing authority as is aboueſaid, haue vſed to take leſſe for the probate of teſtamēts or other things concerning the ſame, then is here ſpecified, they ſhall take as they did before this acte.

Now if any that haue authoritie to take probate of teſtaments or their miniſters, doe attempt againſt this acte, they ſhall forfaite for euery time to the party grieued as much money as they ſhall take contrary to this act. And ouer

that

that x.li. the one halfe to the King, the other to the partie grieued, that wil ſue by action of debt, bill, informatiõ or otherwiſe in any of the kings courts, wherein no eſſoine protection nor wager of the law ſhall be allowed. And euery of them ſhal be charged for himſelfe and for none other.

Prouided, that euery one hauing authoritie aboue ſaid, may call before them euery perſon ſo named executors, to the intent to proue and refuſe the Teſtament, and to bring inuentories and to do euery other thing cõcerning the ſame as they might before this acte, ſo neyther they nor their miniſters ſhall take aboue the fees limited by this act.

How lands and tenements may be by teſtament or otherwiſe diſpoſed, inacted.

An. xxxij. H. viij.

EVery perſon hauing lands or other hereditaments holden in ſocage or of the nature of ſocage tenure in chiefe, and not hauing any lands or hereditaments holden of the King by knights ſeruice, or ſocage tenure, in chiefe, or of the nature of ſocage tenure in chiefe, nor yet of any other perſon by knights ſeruice, may giue, diſpoſe, and deuiſe aſwell by teſtament in writting, as otherwiſe by any acte lawfully executed in his life, all his ſaid lands or hereditaments or any of them.

And euery perſon hauing lands or other hereditaments holden of the King in ſocage or of the nature of ſocage tenure in chiefe, and hauing alſo any other landes or hereditaments holdē of any other perſon in ſocage or of the nature

ture

ture of ſocage tenure, and not hauing any hereditaments holden of the king or of any other by knights ſeruice, may from the ſaid time giue & deuiſe aſwell by teſtament in writing, as otherwiſe by any acte lawfully executed in his life, all and euery of them at his pleaſure, ſauing to the king all his right of primer ſeaſon and reliefes, and alſo all other rights and dueties for tenure in ſocage or of the nature of ſocage tenure in chiefe, as heretofore hath beene accuſtomed, the ſame to be taken and ſued out of the Kinges handes by the perſon to whom any ſuch landes ſhall be diſpoſed or deuiſed, in like manner as hath bene vſed by any heire or heires before the making of this ſtatute. And ſauing and reſeruing alſo fines for alienations of ſuch landes & hereditaments holden of the King in ſocage or of the nature of ſocage tenure in chiefe whereof ſhall be any alteration of freehold or inheritãce made by will or otherwiſe as is aforeſaid. Primer ſeaſon reliefes,

Item all perſons hauing lands or other hereditaments of eſtate of inheritaunce holden of the King in chiefe by knights ſeruice, or of the nature of knights ſeruice in chiefe may giue, will or aſſigne, two parts of the ſame in three parts to be deuided, or elſe aſmuch thereof as ſhall amount to the yeerely value of two parts of the ſame in three parts to be deuided in certaintie and by ſpeciall deuiſions, as it may be knowen in ſeueralty for the aduancement of his wife, preferment of his children, & paimẽt of his debts or otherwiſe at his pleaſure. Sauing to the king aſwell the wardſhip & primer ſeaſon or as much as ſhal amoũt to the clere yeerely value of the

the third part thereof without diminution dower, fraud, coum, charge, or abridgement thereof, as also all fines for alienations of all such lands holdē of him by knights seruice in chiefe, whereof shalbe any alteration of freehold or of inheritance made by will or otherwise. And euery person hauing lands or tenements of estate of inheritance holden of the king in chiefe by knights seruice, & other lands holden of him or by any other by knights seruice or otherwise, may giue or assigne by his testament or otherwise as is aforesaid, two parts thereof in three parts to be deuided, or else as much thereof as shall extend to the yeerely value of two partes, or be deuided in certainty. Sauing to the king, aswell the wardship & primer seison of as much as shal amount to the yeerely value of the third part, without diminution, &c. As also for all fines for alienation as is aboue said.

Fines for alienation.

Item euery person holding landes or tenementes onely, of any other then the king by knights seruice and other lands and tenements in socage, or of the nature of socage tenure may giue, dispose or assure by testamēt or otherwise two parts thereof holden by knights seruice, as much as shall amount to the full yeerely value of two parts, and also all the landes and tenements holden by socage or of the nature of socage tenure at his pleasure. Sauing to the Lord of the lands and tenements holden by knightes seruice for his wardship asmuch therefore as shall amount to the cleare yeerely value of the third part without diminution, &c.

And euery person holding onely of the king by

by knights ſeruice, but not in chiefe, and alſo other hereditamẽts of others by knights ſeruice, and holding alſo other hereditamentes of any other perſon in ſocage or of the nature of ſocage tenure, may giue and aſſure by his laſt will or otherwiſe, two partes of that is holden of the king by knightes ſeruice and two partes of that is holde of any other perſon by knights ſeruice, or as much of either of them as ſhall amount to the full yearely value of two parts, & alſo all his lands and tenements ſo holden in ſocage, or of the tenure of ſocage tenure, ſauing as well to the king the wardſhip of as much as ſhall extend to the cleare yearely value of the third part of the ſame ſo holden of him by knightes ſeruice without diminution, &c. As alſo to the Lordes of whom any of the ſaid landes beene holden by knightes ſeruice for the wardſhip as much of the ſame as ſhal amount to the cleere yerely value of the third part in manner aboue declared.

And if that thirde part which in any of the caſes aboue ſaid, ſhall come to the king, doe not amount to the cleare yearely value of the full fourth part of all the ſaid hereditaments, whereof the king ſhalbe entitled to haue the cuſtody or primer ſeaſon: then the King may take into his handes as much of the other two partes of the ſaide hereditamentes as with that of the ſame hereditamentes remayning in his hands, ſhall make vp the cleere yearely value of the thirde part thereof ſo to be had to him in title of wardſhip and primer ſeaſon, And like benefit to bee giuen to euery Lord of whom any ſuch hereditament ſhall be holden by knightes ſeruice con-

cerning onely his third part for title of ward-shippe.

Also all persons shall sue their liueries for possessions, reuersions, or remainders, and also pay reliefes, & heriots like as they should haue done before the making thereof. And fines for alienatoin shall be paid in the Chauncerie vpon writs of entrie in the post to bee obtained there, for common recoueries to bee suffered of any lands holden of the king in chiefe, in like manner as is vsed vppon alienations of landes so holden in chiefe by fine or feoffement.

Prouided that in such cases where fines for alienatiõ shalbe paid in the Chancery for writs of entrie in the post as is aforesaid, none other fine shall bee paide there for any such writtes. Item where two or more persons holde of the king by knightes seruice ioyntly to them, and to the heires of one of them, and hee that hath the inheritaunce thereof dieth, his heires being within age, the king shall haue the warde and martage of the bodie of such heire, the like of the freeholder or freeholders of the lands so holden by knights seruice notwithstanding.

Sauing to all women such right and title of dower as they ought to haue of any lands or tenemẽts to bee assigned vnto them out of the two partes of the said lands or tenementes seuered from the third part as is aboue said, and not otherwise. And sauing also to the king the reuersion of all such tenemẽts in ioynture, and dower immediately after the death of such tenaunt, if they shall happen to die, during the nonage of the kings wards.

Of

IT is enacted, that from the first day of July in the yeare of our Lord a thousand fiue hundreth and fortie, all marriages within this Church of England contracted betweene lawfull persons, as by this acte we declare, all persons to bee lawfull that bee not prohibited by Gods law to marry, such mariages, being contract and solemnised in the face of the Church, and cõsummate with bodily knowledge of fruit of children or child being had therein betweene the parties so maried, shall be deemed and taken to be lawfull, good and indissoluble, notwithstãding any precõtract of matrimony not consummate with bodily knowledge eyther of the persons so maried, or both shall haue made with any other before the time of contracting that mariage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation prescription, law or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, impech any mariage without leuitical degrees. And that no person shall after the said first day of July aforesaid, bee admitted to any of the spirituall courtes, within this the Kinges realme or any his other lands & dominions to any processe, plee, or allegation contrarie to this acte.

FINIS.

¶ This Table doth readily ſhew where the principall matters contayned in this Treatiſe are to be found, the letter a. ſignifying the firſt page or ſide: and the letter b. the ſecond page or ſide.

Homage

Rent

Finis Tabulæ.